Petition

81-472

No._____

Office-Supreme Court, U.S.
FILED
SEP 8 1981
ALEXANDER L. STEVAS,
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1981

PRINCE GEORGE'S COUNTY, MARYLAND
Petitioners,

v.

UNITED STATES OF AMERICA, ET AL.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION

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THE CASILLAS PRESS, INC.—1717 K Street N. W.—Washington, D. C.—223-1220

QUESTIONS PRESENTED

1. Whether a federal district court order issued pursuant to the Clean Water Act requiring a state agency to purchase a specific land site in the State of Maryland and develop thereon a sludge composting facility, without regard for state law governing the development of such facilities, violates the principles of federalism embodied in the Tenth Amendment to the United States Constitution?

2. Whether a federal district court order enjoining a state agency from complying with a Maryland state court order and enjoining all parties from initiating further state court proceedings violates the federal Anti-Injunction Act, 28 U.S.. § 2283, which protects the independence of state courts?

PARTIES TO THE PROCEEDING

The parties to this proceeding are: the United States of America; the State of Maryland; the Commonwealth of Virginia; the District of Columbia; the State Water Control Board of Virginia; Prince George's County, Maryland; Montgomery County, Maryland; Fairfax County; Virginia; and the Washington Suburban Sanitary Commission.

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OPINIONS BELOW

The Court of Appeals for the District of Columbia Circuit consolidated the following cases in the September Term, 1979, in all of which Prince George's County, Maryland was the Intervenor-Defendant, Appellant: *United States of America v. District of Columbia, et al.* (No. 80-1495); *State War Control Board, et al. v. Washington Suburban Sanitary Commission, et al.* (No. 80-1496); *State Water Control Board, An Agency of the*

Commonwealth of Virginia, et al. v. Washington Suburban Sanitary Commission, et al. (No. 80-1653); *United States of America v. District of Columbia, et al.* (No. 80-1654); *State Water Control Board, et al. v. Washington Suburban Sanitary Commission, et al.* (No. 80-1718); *United States of America v. District of Columbia, et al.* (No. 80-1719). This opinion, filed June 10, 1981, has not yet been reported.

JURISDICTION

The opinion of the United States Court of Appeals for the District of Columbia Circuit was issued on June 10, 1981. This petition has been filed within ninety days of that date. This Court has jurisdiction to review the decision of the Court of Appeals pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

The following are citations to the Constitutional provisions and statutes which this case involves. Their pertinent text is set forth in the Appendix to this Petition. Tenth Amendment, Constitution of the United States; 28 U.S.C. § 2283; 33 U.S.C. §§ 1251, 1252, 1311, 1319, 1345, 1370.

STATEMENT OF THE CASE

This controversy concerns the disposal of sewage sludge generated at the Blue Plains Sewage Treatment Plant, which is located at the confluence of the Potomac and Anacostia Rivers in the District of Columbia.[1] The principal jurisdictions which use the Blue Plains facility are: the District of Columbia; Montgomery County,

[1]Sludge is the residual waste material which results from the treatment of sewage. Blue Plains produces approximately 1500 tons of sludge per day.

Maryland; Prince George's County, Maryland; and Fairfax County, Virginia. On behalf of the two Maryland counties, the Washington Suburban Sanitary Commission (WSSC), an administrative agency created by the Laws of Maryland, is the operating agency for water and sewer disposal.[2] At issue is the division of authority between the federal and state courts to intervene in various aspects of sludge disposal.

The groundwork of this controversy was laid in 1973 when the Virgina Water Control Board, Fairfax County and the District of Columbia brought suit in the United States District Court for the District of Columbia (hereafter the district court) against the WSSC. The suit alleged that WSSC was exceeding its allotted use of the Blue Plains plant, thus causing the plant to discharge inadequately treated sewage into the Potomac River. The United States intervened as party plaintiff, alleging that this excess flow was polluting the river in violation of the Federal Water Pollution Control Act of 1973, 33 U.S.C. § 1251 *et seq.* (Clean Water Act). Montgomery County, Prince George's County, and the State of Maryland intervened as parties defendant.

With this suit as an impetus, the user jurisdictions entered into the Blue Plains Sewage Treatment Plant Agreement of 1974; it provided that each jurisdiction except the District of Columbia would accept responsibility for disposing a proportionate share of sludge, that a permanent disposal plan would be devised by June 1976, and that the plan would be implemented by December 1977.

It appearing that the agreed-upon schedule would not be met, the United States filed a complaint in the district

[2]The policies of WSSC are determined by six Commissioners, three from each county. Its budget is subject to the approval of both county governments.

court in November 1977 alleging that the 1974 Consent Decree had been violated, and that the failure to devise a permanent sludge disposal plan would violate the Clean Water Act. A Consent Order extended the period of compliance with the 1974 Agreement to September 1978.

In May 1978, upon motion of the United States and evidence that a permanent sludge disposal plan was not forthcoming, the district court entered an order requiring each jurisdiction to designate a site, any site, within its boundaries for sludge disposal. Montgomery County designated "Site 2," a 115-acre undeveloped tract in the Montgomery Industrial Park, adjacent to the Prince George's County border and within one mile of approximately 25,000 Montgomery and Prince George's County residents.[3] On July 10, 1978 the district court entered an order reflecting the sites designated by the counties, ordering that the sites be developed for sludge disposal and made operational by July 1, 1979. The range of this 1978 order is now in question.

The WSSC and Montgomery County immediately initiated the development of Site 2, filing condemnation proceedings to acquire the land in October 1978. The 1979-1980 budget adoped by WSSC in May 1979 included $16.9 million for the acquisition and construction of the facility.

Prince George's County opposed the development of Site 2 as a sludge composting facility. Its position was and continues to be that, for a number of reasons, an alternative location would be more appropriate. A title examination of Montgomery County's designated site had

[3]Site 2 was designated as a composting site, where sludge and wood chips would be mixed and left in piles to aerate for 35-45 days. The Calverton Citizens Association, representing area residents, filed a report with the district court alleging that such a use would subject them to health hazards.

revealed restrictive covenants which prevented the proposed use of the tract.[4] Condemnation would cost three to five million dollars and take three to five years to complete. The added time and expense of acquisition would affect Prince George's County, which pays sewer usage and water consumption rates to WSSC, and its residents. Furthermore, the funds that WSSC provided in its 1979-80 budget for Site 2 land acquisition had never been given the required approval by the County, yet WSSC was about to expend those funds illegally to purchase the site. Prince George's County, therefore, sought to enjoin the acquisition of Site 2 in the Circuit Court for Prince George's County.[5] The court found that it had concurrent jurisdiction over the controversy, but denied the injunction on November 27, 1979.

The WSSC reversed its position shortly thereafter, presumably on the basis of its General Counsel's opinion that the covenants on the land were enforceable, and his recommendation that the condemnation action be abandoned. On March 12, 1980 the WSSC Commissioners, in particular the three from Prince George's County, voted to delete Site 2 funding from its 1980-81 budget.

Montgomery County continued to advocate for the development of Site 2, despite its acknowledgment that the covenants on the land would make it difficult to operate a

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[4]The covenants precluded use of the land in any manner which would create objectionale odors, genrate dense smoke or high levels of noise, or constitute a "dump or sanitary landfill."

[5]*Prince George's County v. WSSC*, No. E-7692 (Circuit Court for Prince George's County, Maryland, filed Nov. 27, 1979), appealed to the Court of Special Appeals, No. 122, September Term 1980 (the budget suit).

composting facility at that site. Its response to WSSC's vote to delete acquisition funds from the budget was to turn to the federal court – on April 4, 1980 Montgomery County moved the district court to compel WSSC to restore those funds to its budget. A rather peremptory hearing was held during which no evidence was received on the cost of acquiring the covenants. Nonetheless, on April 25, 1980 the district court ordered WSSC to reinsert in its budget the funds to acquire Site 2. The authority for issuing this April 25 order is now being questioned.

Following the April 25 order, the WSSC Commissioners convened a meeting and a vote was taken to reinsert Site 2 monies in the budget. Because timing and procedure problems could not be settled, the three Commissioners from Prince George's County refused to vote. Again Motgomery County turned to the district court, moving that the three Commissioners be cited for contempt. The district court refused to do so, but did rule on June 4, 1980 that the restoration of funds was a purely ministerial act (pursuant to the April 25 order) which required no vote, and ordered WSSC's General Manager to do it.[6] The federal court's authority for issuing this June 4 order is now being questioned.

Prince George's County continued to oppose Montgomery County's selection of Site 2 because of the time, expense and illegal means involved in acquiring the land and developing it for sludge disposal. Since these objections concerned issues of state law, two tangential state court actions were initiated – both prior to the 1980 orders of the federal court. The first alleged that the state sewage sludge permit was invalid and that the public

[6]The funds were reinserted on June 11, 1980. On June 13 WSSC offered $6,000,000 to purchase the site; the covenants were not purchased.

health and environment were not adequately protected; this action was never ruled upon.[7] In the second, Prince George's County sought relief against WSSC, alleging that because of the restrictive covenants, by acquiring Site 2 the WSSC would be spending public monies for land which could not be used for the very public purposes for which it was being condemned, and that this would amount to a breach of fiduciary duty on the part of the WSSC Commissioners.[8]

The Circuit Court issued an order on June 17, 1980, at which time it was fully aware of the federal court's April 25 order to reinsert Site 2 funds in WSSC's budget, and its June 4 order effecting the same. The state court issued a temporary injunction preventing WSSC from acquiring Site 2 until the covenant suit could be heard two months hence. This June 17 order, it is urged, should have been given effect.

Instead of complying with the state court injunction, the WSSC immediately turned to the federal court. On June 27, 1980 the district court issued an expansive order which enjoined WSSC from complying with the June 17 state court injunction; ordered WSSC to expeditiously proceed to develop the compost facility at Site 2; ordered Prince George's County to withdraw from the three state court proceedings involving Site 2; enjoined all parties from initiating any state court proceeding which would frustrate the district court's orders; and ordered that any modifica-

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[7] *Calverton Citizens Association v. Buck, et al.*, No. E-70934 (Circuit Court for Montgomery County, Maryland, filed April 16, 1980) (the permit suit).

[8] *Prince George's County v. WSSC*, No. E-8512 (Circuit Court for Prince George's County, Maryland, filed April 16, 1980) (the covenant suit).

tion of the federal court's orders was to be sought only in federal court. Prince George's County sought a stay of this order which was denied by the district court on June 27 and by the Court of Appeals on July 3. On June 10, 1981 the June 27, 1980 district court injunction was upheld by the Court of Appeals for the District of Columbia Circuit.

Prince George's County alleges that the expansive orders of the district court violated principles of federalism embodied in the Tenth Amendment of the Constitution, as well as the federal Anti-Injunction Act. It amounted to a radical intrusion on state prerogatives.

BASIS FOR FEDERAL JURISDICTION

Federal jurisdiction in the United States District Court for the District of Columbia was originally based on 28 U.S.C. § 1332 and 28 U.S.C. §§ 2201-2202. The United States intervened pursuant to 28 U.S.C. § 1345 and 33 U.S.C. § 1319, the Federal Water Pollution Control Act of 1973.

REASONS FOR GRANTING THIS WRIT

Important questions of federalism and state sovereignty are posed by this case. The Court of Appeals failed to recognize the state court proceedings for what they were – separate and distinct from the federal proceedings, concerned solely with intrastate issues. The various orders of the district court constituted an unconstitutional encroachment on state rights in violation of the Tenth Amendment, and violated the federal Anti-Injunction Act, 28 U.S.C. § 2283. It is the duty of the Supreme Court to guard the states from encroachment upon their reserved rights by the federal government or the federal courts. *Harkrader v. Wadley,* 172 U.S. 148, 162 (1898).

I.

Federal jurisdiction was originally invoked in this controversy under the Federal Water Pollution Control Act of 1973, 33 U.S.C. § 1251 *et seq.* (Clean Water Act). Insofar as the Act controls the type and amount of pollution that may be discharged either directly or indirectly into the navigable water of the states, it has been held to be a proper exercise of the commerce power of Congress. *United States v. Ashland Oil and Transportation Co.*, 504 F.2d 1317 (6th Cir. 1974).

The extent to which the commerce power may be used to impose federal standards on the sovereign states was addressed in *National League of Cities v. Usery*, 426 U.S. 833 (1976). This Court held that Congress may not exercise its power over interstate commerce "to force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made." 426 U.S. at 855. In *Usery* the extension of the Fair Labor Standard Act's minimum wage and maximum hour provisions to state employees was held invalid; to require state compliance would be an impermissible intrusion into the protected area of state sovereignty. The power to determine the hours and wages of state employees was an "integral" state function, essential to the separate and independent existence of the states. Application of the standards usurped state discretion and displaced state policies regarding the manner in which the delivery of governmental services would be structured. The decision confirms that the principle of federalism embodied within the Tenth Amendment restricts the manner in which the commerce power may be exercised.

In the case at bar the federal court, under the auspices of the Clean Water Act, enforced the provisions that Act

in a manner that drastically invaded state sovereignty. Under the *Usery* doctrine the decision may not stand.

The issue is narrower than the Court of Appeals would have it appear. Certainly the federal government has plenary power over environmental protection, including water pollution, and the federal court had authority to require user jurisdictions of the Blue Plains facility to devise a plan to dispose of sludge in order to comply with federal requirements. However, the question at the heart of the conflict, and the one with which the state court was intimately involved, was simply *where* in Montgomery County the composting facility should be developed. The question of whether such a facility should be built was properly resolved by the federal court; the question of where it should be located was purely a state issue.

The state court sought to wrestle with issues concerning the effect the proposed use of Site 2 would have on its citizens, including health and environmental safety, waste of public funds, and breach of public trust. But the federal court usurped the state's ability to make the above considerations. Using the Clean Water Act as a theoretical and jurisdictional basis, the federal court went beyond the limits of its authority under that Act, as limited by *Usery* and the Tenth Amendment. It ordered that these funds be expended for the acquisition of Site 2, regardless of the waste of public funds which might be entailed should that site not be usable for its public purpose. Finally, the federal court prohibited further challenges to the development of Site 2 in the state courts, thereby eliminating the power of the state to consider vital concerns for the public health and safety of its citizens which surround the purchase and use of the site for its proposed purpose.

The federal order leaves no discretion to the State of Maryland, its agencies (such as the WSSC), or its political

subdivisions. WSSC must provide funds to acquire Site 2; the tract land in Montgomery Industrial Park must be condemned; this land must be developed as a sludge composting facility. Any state or county concerns are precluded. Surely the federal court's authority to enforce the Clean Water Act does not extend so intrusively into intrastate concerns. This is similar to the type of interference with "integral government functions" which this Court found abhorrent in *Usery*.

The federal court's actions appear even more intrusive when considered in light of the federal/state interplay contemplated by Congress in enacting the Federal Water Pollution Control Act of 1973. While Congress did indeed establish a "comprehensive program for controlling and abating water pollution," *City of Milwaukee v. Illinois and Michigan*, ____ U.S. ____, 101 S.Ct. 1784, 1793 (1981), citing *Train v. City of New York*, 420 U.S. 35, 37 (1975), the Act is not "exclusive." Rather, it "contemplates a shared authority between the Federal government and the individual States." *City of Milwaukee v. Illinois and Michigan, supra.*, 101 S.Ct. at 1805 (Justice Blackmun, dissenting). Its purpose is stated this way:

> "The states shall lead the national effort to prevent, control and abate water pollution . . . the Federal role has been limited to support of, and assistance to, the States." Senate Report No. 92-414, 92nd Congress, 1st Session, p. 1 (1971).

The Act has been interpreted to grant concurrent jurisdiction over water pollution to both state and federal courts. *Town of Sutton v. Water Supply and Pollution Control Commission*, 116 N.H. 154, 355 A.2d 867 (1976); *Kegonsa Joint Sanitary District v. City of Stoughton*, 87 Wis.2d 131, 274 N.W.2d 598 (1979).

The reliance by the Court of Appeals on the balancing

test espoused in Justice Blackmun's concurring opinion in *Usery* is misplaced, for it ignores the unambiguous decision of the Court. Even if Justice Blackmun's view is adopted, however, it cannot be used to justify the intrusive federal court actions taken in the present case. As Justice Blackmun interprets the *Usery* decision, a balancing approach is mandated: states are protected from federal intrusion only where the state interest is outweighed by the federal interest — where the federal interest is "demonstrably greater and where state compliance with imposed federal standards is essential." 326 U.S. at 856.

Here there was no violation of federal standards. On the contrary, there is every indication that the state courts were taking measures to enable the counties and WSSC to comply fully with federal standards. If Site 2 had been purchased and the quagmire of anticipated problems arisen to prevent its development or use for sludge disposal, the federal purpose would have been frustrated and federal standards violated. If, instead, the state courts had been allowed to anticipate and resolve such problems, effective and more immediate compliance would be ensured. In other words, state court resolution of the permit, budget and covenant disputes might have led to the conclusion that an alternative location be selected for the disposal of Montgomery County's proportionate share of sludge from Blue Plains. It might have led to the conclusion that Site 2 was appropriate for this purpose. Either way, the state court is simply assisting the federal court in its quest that a suitable disposal site be made operational as soon as possible. There is no conflict with federal standards. There is no contradiction between state and federal interests. Both can, and should, be permitted to coexist, each without interference from the other.

It is desirable that this Court review the decision of the

Court of Appeals to determine the extent to which a federal court may intrude on the sovereignty of the state in order to effect compliance with the Clean Water Act, an act promulgated under the commerce power of the United States Congress.

II.

The Anti-Injunction Act, 28 U.S.C. § 2283, provides:

> "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The purpose of the Act, which rests on the fundamental constitutional independence of the states and their courts, *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers,* 398 U.S. 281, 287 (1970), is to "prevent needless friction betwen state and federal courts." *Mitchum v. Foster,* 407 U.S. 225, 232, n. 10 (1972), citing *Oklahoma Packing Co. V. Oklahoma Gas & Electric Co.,* 309 U.S. 4, 9 (1940). Its prohibition forms a "formidable barrier" to the use of federal court injunctions to stay state court proceedings. *Reines Distributors, Inc. v. Admiral Credit Corp.,* 182 F.Supp. 226, 227 (S.D.N.Y. 1960), *reversed on other grounds,* 319 F.2d 609 (2nd Cir. 1963).

This court has consistently and emphatically required strict compliance with the statute, describing it as an "absolute prohibition" against any injunction of any state court proceeding that does not fall within one of the three specifically defined exceptions to the Act. *Vendo Co.v. Lekiro-Vend Corp.,* 443 U.S. 623, 630 (1977). Any doubts about the propriety of a federal injunction against a state

court proceeding "should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy." *Atlantic Coast Line R. Co., supra.*, 398 U.S. at 297. It is "clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation." *Amalgamated Clothing Workers of America v. Richman Bros.*, 348 U.S. 511, 514 (1955).

a.

The "protect or effectuate its judgments" exception to § 2283 was used by the district court as a basis for issuing the June 27, 1980 order enjoining compliance with a state court injunction and enjoining the initiation and prosecution of state court proceedings. Known also as the "relitigation" exception, there is some question as to its breadth and intent.

The exception has been described as a means of protecting the party who succeeded in federal court from being put through the expense and inconvenience of relitigating the same issue. *Baker v. Gotz*, 415 F.Supp. 1243, 1250 (D.Del. 1976). Its intent, it has been said, is to affirm the power of the federal courts to enjoin the relitigation of cases in state courts which have been "fully and finally" adjudicated at the federal level. Reviser's Note to 28 U.S.C. § 2283; 7 MOORE'S FEDERAL PRACTICE ¶ 60, 39(2) at 627 (2nd ed. 1979); *Mitchum v. Foster*, 407 U.S. 225 *Roth v. Bank of the Commonwealth*, 583 F.2d 527 (6th Cir. 1978) citing *Lamb Enterprises v. Kiroff*, 549 F.2d 1052, 1061 (6th Cir. 1977).

For the most part the courts are clear in their application of the exception. It is used simply to solve the problem of multiple litigation of the same cause of action. Where allegedly conflicting lawsuits in both state and federal courts present essentially different issues and different causes of action, an injunction to stay the state

court proceedings will not lie. *State of Oklahoma ex rel. Wilson v. Blankenship*, 447 F.2d 687, 692 (10th Cir. 1971); *Woods Exploration & Production Co. v. Aluminum Co. of America*, 438 F.2d 1286 (5th Cir. 1971); *Samuel C. Ennis & Co., Inc. v. Woodmar Realty Co.*, 542 F.2d 45 (7th Cir. 1976). As Justice Reed wrote in his dissenting opinion in *Toucey v. New York Life Insurance Co.*, 314 U.S. 118 (1941), these injunctions are tolerated only because, in the alternative:

> ". . . a federal judgment entered perhaps after years of expense in money and energy and after the production of thousands of pages of evidence comes to nothing that is final. It is to be only the basis for a plea of *res judicata* which is to be examined by another court, unfamiliar with the record already made, to determine whether the issues were or were not settled by the former adjudication." 314 U.S. at 144.

If this interpretation of the intent and application of the "protect and effectuate" exception had been applied to the case at bar, it would have been clear that the state court was not relitigating issues which had been "fully and finally" adjudicated at the federal court. The causes of action differed in each court. In the federal suit the cause of action was to prevent violations of the Clean Water Act caused by the discharge of pollutants from the Blue Plains Plant. The controversies with which the state court was involved included protection of public revenues, enforceability and compensability of covenants under state law, and the statutory right of counties to approve the budget of a state agency. None of these issues was considered by the federal court.

Certainly none of these state issues had been "fully and

finally" adjudicated by the federal court. Although the district court order of July 10, 1978 did address Site 2, the reference was made out of deference to Montgomery County's designation of this particular site. The 1978 order was result-oriented, not site-oriented.[9] The result it sought to achieve was the disposal of sludge from Blue Plains so that the Clean Water Act would not be violated; its focus was not on where the disposal sites would be located. The order provided for compliance with state law, and the implication was clear that if Site 2 did not pass muster under state law, an alternative site could be chosen.

Judge Goldberg of the Fifth Circuit describes the "protect and effectuate" exception as a means of assuring the winner in federal court that he "will not be deprived of the fruits of his victory by a later contrary state judgment. . . ." *Woods Exploration & Pro. Co., supra.*, 438 F.2d at 1312. The heart of the 1978 federal court order, the "fruit" if you will, is that Montgomery County proceed expeditiously to develop and begin operating a sludge disposal site. Any state court decisions would be collateral, and not contrary, to that order, and would deprive neither Montgomery County nor the WSSC of the "fruits" of their 1978 federal victory. The absence of a relitigation problem, therefore, precludes an injuction of state court proceedings.

The Court of Appeals in the case at bar did not adopt this interpretation of the "protect and effectuate" exception. Instead of looking to determine whether the issues raised in the state court had already been raised and fully litigated at the federal level, the court looked to the effect

[9]Although the April 25 and June 4, 1980 orders of the district court did refer specifically to Site 2 in mandating that WSSC include funds for its purchase in the budget, these orders were allegedly attempts only to enforce the 1978 order.

of the state proceeding on the prior federal judgment. It apparently found support for this position in this language from *Atlantic Coast Line R. Co., supra,* 398 U.S. at 295:

> "Both exceptions to the general prohibition of § 2283 imply that some federal injunctive relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case."

This language, however, follows a lengthy discussion of the "in aid of jurisdiction" exception to § 2283, and it is doubtful that it was intended to expand the interpretation of the "protect or effectuate" exception. In context the language in *Atlantic Coast Line R. Co.* appears simply to illuminate the "in aid of" exception, showing its similarities with the "protect and effectuate" exception and reasserting its restrictive application.

The Court of Appeals' reliance on *Doe v. Ceci,* 517 F.2d 1203 (7th Cir. 1975) is also misplaced, for that case merely reasserts the long-standing view that injunctions may issue only to prevent relitigation of matters that have been finally decided by the federal court. In *Doe* a county hospital's policy prohibited the performance of elective abortions. The federal court enjoined enforcement of the policy as violative of the Fourteenth Amendment, ordering the defendants to make hospital facilities available for elective abortions, particularly for Jane Doe, the original, and indigent, plaintiff. A state court issued an injunction restraining the disbursement of county funds to pay for abortions of indigent women. The federal court then issued an injunction, preventing the state court judge from enforcing his injunction against payments. The court's ra-

tionale was that the original federal order, issued on behalf of an indigent patient, necessarily contemplated and required payment for elective abortions from county funds. The issue of payment, then, had been fully litigated and the state action could be enjoined.

The case at bar is distinguishable from *Doe*. Again, the 1978 district court order was result-oriented rather than site-oriented. It anticipated compliance with state law requirements in the purchase and development of Site 2. The state court's June 17 temporary injunction on the purchase of Site 2 until certain state law issues could be resolved did not, therefore, conflict with the federal court order. Since these state law issues had not (and could not have) been litigated, either explicitly or impliedly, in the federal court, there was no relitigation problem.

Even if a broad interpretation of the "relitigation" exception is accepted, it cannot be stretched to the limits adopted by the Court of Appeals in the present case. By upholding a federal injunction against state court proceedings which concerned different issues, had not been litigated in the federal arena, and had only a tangential relationship to prior federal court orders, the Court of Appeals enlarged the "protect and effectuate" exception to § 2283. This Court has warned against such "loose statutory construction." *Atlantic Coast Line R. Co., supra.*, 398 U.S. at 287.

The Court of Appeals considered it sufficient that the state court was enjoining one course of conduct which would have complied with the federal court order (the purchase and development of Site 2). However, other courses of conduct were available which would have equally complied, namely, the purchase and development of an alternative site. It was within the realm of the state court's

jurisdiction to make this determination. The mere fact that both state and federal courts entertained litigation concerning Site 2, and that this overlap of jurisdiction provided an arena in which conflict may have occurred, does not justify the federal court's injunction. *Denver-Greeley Valley Water Users Association v. McNeil,* 131 F.2d 67, 71 (10th Cir. 1942); *Atlantic Coast Line R. Co., supra.,* 398 U.S. at 295 (even unmistakable interference with federal rights does not justify an injunction of state court proceedings).

It is desirable that this Court review the analysis, interpretation and application of the "protect and effectuate" exception to the Anti-Injunction Act applied by the Court of Appeals to determine if that court has unduly broadened the exception.

b.

The Court of Appeals added, in a footnote, that the "in aid of jurisdiction" exception to the Anti-Injunction Act, 28 U.S.C. § 2283, also justified issuance of the June 27, 1980 district court order. This Court has stated that in order for the exception to apply, it is not enough that the requested injunction be related to the federal jurisdiction – it must be *"necessary in aid of"* that jurisdiction. *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers,* 398 U.S. 281, 296 (1970) (emphasis in the original).

Traditionally the exception has been interpreted to mean that if an action is *in rem,* a federal court first obtaining jurisdiction over the *res* can enjoin suits in state courts involving the same *res.* 17 WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE § 4225 (1978); *Vendo Co. v. Lektro Vend Corp.,* 433 U.S. 623

(1977). In the instant case, both federal and state actions are *in personam,* therefore, this rationale is inapplicable.

The exception has been extended in recent years in school desegregation cases, where the federal court has "taken the controversy in hand and will exercise continuing jurisdiction over it." 17 WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE § 4225 (1978), citing *Swann v. Charlotte-Mecklenburg Board of Education,* 501 F.2d 383 (4th Cir. 1974) and *Grenchik v. Mandel,* 373 F.Supp. 1289 (D.Md. 1973). The underlying rationale for issuing injunctions in these cases, however, is that the issues being litigated in the state courts could not be separated from the issues and relief involved in the federal suits. See *Swann, supra.* 501 F.2d at 384. This is certainly not the situation in the present case, and the exception should not be so extended.

The general rule, which should be applied here, is that *in personam* actions may proceed concurrently in state and federal courts, each without interference from the other. *Vendo Co. v. Lektro-Vend Corp., supra.,* 433 U.S. at 643. *Kline v. Burke Construction Co.,* 260 U.S. 226, 230 (1922). It matters not that the same subject-matter is involved, provided each court has jurisdiction over its respective complaints. *Atlantic Coast Line R. Co., supra.,* 398 U.S. at 297.

Here the state courts properly assumed jurisdiction over intrastate issues. The federal court had no authority to intervene and the "in aid of jurisdiction" exception to the Anti-Injunction Act is inapplicable.

CONCLUSION

The Constitution of the United States recognizes and preserves the autonomy and independence of the states —

independence in their judicial as well as legislative departments. From the beginning this country has maintained two essentially separate legal systems, each of which proceeds independently of the other. The rank and authority of both are equal, and any interference of one by the other, except as specifically authorized, is an invasion of the authority of the other. When the federal courts encroach on the rights and privileges of state courts, a denial of state independence is suggested.

In the present case the federal court overstepped the dividing line and encroached on areas within the realm of the Maryland courts. Because this amounted to a violation of both the principles of federalism embodied in the Tenth Amendment and the Anti-Injunction Act, a writ of certiorari should issue.

Respectfully submittted,

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Appendix

FILED
SEP 8 1981
ALEXANDER L. STEVAS,
CLERK

81-472

No._____

IN THE

Supreme Court of the United States

October Term, 1981

PRINCE GEORGE'S COUNTY, MARYLAND
Petitioners

v.

UNITED STATES OF AMERICA, et al.
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

APPENDIX

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THE CASILLAS PRESS, INC.–1717 K Street N. W.–Washington, D. C.–223-1220

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1495

UNITED STATES OF AMERICA

v.

DISTRICT OF COLUMBIA, ET AL.

PRINCE GEORGE'S COUNTY, MARYLAND,
(INTERVENOR-DEFT.), APPELLANT

No. 80-1496

STATE WATER CONTROL BOARD, ET AL.

v.

WASHINGTON SUBURBAN SANITARY COMMISSION, ET AL.

PRINCE GEORGE'S COUNTY, MARYLAND,
(INTERVENOR-DEFT.), APPELLANT

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

No. 80-1653

STATE WATER CONTROL BOARD, AN AGENCY OF THE COMMONWEALTH OF VIRGINIA, ET AL.

v.

WASHINGTON SUBURBAN SANITARY COMMISSION, ET AL.

PRINCE GEORGE'S COUNTY, MARYLAND, (INTERVENOR-DEFT.), APPELLANT

No. 80-1654

UNITED STATES OF AMERICA

v.

DISTRICT OF COLUMBIA, ET AL.

PRINCE GEORGE'S COUNTY, MARYLAND, APPELLANT

No. 80-1718

STATE WATER CONTROL BOARD, ET AL.

v.

WASHINGTON SUBURBAN SANITARY COMMISSION, ET AL.

PRINCE GEORGE'S COUNTY, MARYLAND, APPELLANT

No. 80-1719

UNITED STATES OF AMERICA

v.

DISTRICT OF COLUMBIA, ET AL.

PRINCE GEORGE'S COUNTY, MARYLAND, APPELLANT

Appeals from the United States District Court
for the District of Columbia

(D.C. Civil Action Nos. 77-1929 and 1813-73)

Argued April 9, 1981

Decided June 10, 1981

Robert B. Ostrom, County Attorney, Prince George's County with whom *Richard S. Alper* and *Robert H. Drummer*, Associate County Attorneys were on the brief for appellant.

Thomas A. Deming, Assistant Attorney General, State of Maryland for appellee, State of Maryland.

John P. Arness with whom *Curtis E. von Kann*, *Allan D. Windt* and *Henderson J. Brown, IV*, were on the brief for appellee, Washington Suburban Sanitary Commission.

Rosanne Mayer, Attorney, Department of Justice with whom *James W. Moorman*, Assistant Attorney General, *Anne S. Almy* and *Patrick J. Cafferty, Jr.*, Attorney, Department of Justice were on the brief, for appellee, United States of America. *Angus Macbeth* and *Donald W. Stever*, Attorney, Department of Justice also entered appearances for appellee, United States of America.

Marshall Coleman, Attorney General, *James E. Ryan, Jr.*, Deputy Attorney General and *Frederick S. Fisher*, Assistant Attorney General, Commonwealth of Virginia were on the brief for appellee, Commonwealth of Virginia, State Water Control Board.

Robert G. Tobin, Jr. Deputy County Attorney, *Nathan J. Greenbaum*, Assistant County Attorney, Montgomery County were on the brief for appellee, Montgomery County, Maryland.

Frank W. Stearns and *David T. Stitt*, Assistant County Attorneys also entered appearances for appellee, Fairfax County, Virginia.

Judith W. Rogers, Corporation Counsel, *Joyce M. Notarius*, *Richard G. Wise* and *Edward L. Curry*, Assistant Corporation Counsel were on the brief for appellee, District of Columbia.

Before: MCGOWAN, TAMM and WALD, *Circuit Judges*

Opinion for the Court filed by *Circuit Judge* WALD.

WALD, *Circuit Judge*: This appeal is the latest chapter in an eight-year-old controversy concerning disposal of sewage sludge generated at the Blue Plains Sewage Treatment Plant in the District of Columbia. Since the early 1970's, the parties to this appeal have struggled to devise a plan for sludge disposal at sites within the Washington area jurisdictions which use the Blue Plains facility. Appellant Prince George's County ("P.G. County") opposes appellee Montgomery County's selection of one such site ("Site 2") for its sludge disposal. The district court, however, endorsed the selection of Site 2 in 1978 and ordered the budgeting of funds for its implementation on April 25, 1980, and June 4, 1980. In an effort to block that implementation, P.G. County then instituted a series of state court actions. The district court responded by enjoining further state court proceedings on June 27, 1980. P.G. County argues here that the district court orders of April 25 and June 4 exceeded the court's authority under the Clean Water Act, and that the order of June 27, 1980, violates the Anti-Injunction statute. For the reasons stated below, we disagree.

I. BACKGROUND

On September 24, 1973, the Virginia Water Control Board, Fairfax County, and the District of Columbia brought suit in the United States District Court for the

District of Columbia against the Washington Suburban Sanitary Commission ("WSSC")[1] (Civil Action No. 1813-73). The complaint alleged that WSSC, in violation of regional agreements, was exceeding its allotted use of the Blue Plains sewage treatment plant in D.C., thus causing the plant to discharge inadequately treated sewage into the Potomac River.

The United States intervened as a party-plaintiff, alleging that excess flow from the WSSC was causing pollution of the Potomac in violation of the Federal Water Pollution Control Act of 1970, 33 U.S.C. § 1251 *et seq.* Montgomery County, P.G. County, and the State of Maryland intervened as parties defendant. Plaintiffs then amended their complaint to request that P.G. and Montgomery Counties be ordered to comply with another provision of the regional agreement by designating and providing sites for the disposal of sludge[2] generated at the Blue Plains facility.

Prior to trial the parties entered into the Blue Plains Sewage Treatment Plant Agreement, which was subsequently incorporated into a Consent Decree dated July 29, 1974. The decree provided that the court would retain jurisdiction to enforce the agreement and required

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[1] The WSSC is an agency formed under the laws of Maryland to serve the sewage and water supply needs of Montgomery and Prince George's Counties. The Commission's policies are determined by six Commissioners, three from each county. *See* Section 1-1 of the WSSC Code. Budgets adopted by the WSSC are subject to the approval of both county governments. Sections 1-4, 7-1.

[2] Sludge is the byproduct of the sewage treatment process. Disposal methods include entrenchment in designated areas and the composting process for which Site 2 was designated. The end product of composting may be used as a fertilizer or compost. The 1974 agreement contemplated that the Blue Plains plant would generate 2,400 tons per day of sludge requiring disposal. Joint Appendix at 108.

court approval for any modification of it. The agreement established limits on flows to the plant and provided that the user jurisdictions in the Washington metropolitan area would devise a permanent equitable plan for the disposal of sludge produced at Blue Plains by June 30, 1976, and would implement the plan by December 31, 1977. During the interim period the parties agreed to dispose of sludge in proportion to their share of sewage flow to the plant.

Despite the requirements of the Consent Decree, the parties failed to agree on a permanent sludge disposal plan. On the eve of the expiration date for the interim plan, the United States filed a complaint in district court (Civil Action No. 77-1929) on November 9, 1977, alleging that the District of Columbia, the WSSC, Montgomery County, P.G. County, and Fairfax County had violated the court's 1974 order by failing to devise a permanent sludge management plan. The complaint further alleged that the impasse over sludge disposal would cause the Blue Plains plant to curtail or eliminate treatment of sewage, thus resulting in increased discharges of pollutants into the Potomac River in violation of the Federal Water Pollution Control Act. Like its predecessor, the 1977 suit led to negotiations culminating in a consent order, dated January 24, 1978, which extended the date of the interim period under the 1974 agreement to September 21, 1978, and extended the deadline for submission of a permanent sludge plan to January 15, 1978.

The user jurisdictions again failed to agree on a permanent plan. On May 18, 1978, upon motion of the United States and after hearing, the district court entered an order requiring each jurisdiction to file a report designating a site within its boundaries for disposal of sludge. Montgomery County submitted a report designating two sites for disposal of raw sludge, one of which

was an undeveloped tract of land adjacent to the Montgomery Industrial Park on the Montgomery County-Prince George's County border (Site 2). Site 2 was designated as a composting site, where sludge would be mixed with wood chips and aerated for periods of 35-45 days. The Calverton Citizens Association, representing residents of the area surrounding Site 2, submitted a report to the court, alleging that the proposed use of Site 2 would subject them to a health hazard.

On July 10, 1978, the court entered an order requiring the user jurisdictions to proceed to develop their designated sites for sludge disposal. In particular, Montgomery County was ordered to have the Site 2 composting facility operational by July 1, 1979. The court ordered WSSC to take all necessary action, including acquisition of property rights and obtaining all necessary permits. The court also ordered that the user jurisdictions take no action unrelated to protection of the public health to prevent the sludge disposal measures ordered. Noting the concerns expressed by the Calverton Citizens Association, the court ordered that Montgomery County through the WSSC take all measures necessary to protect the public health in the implementation of Site 2. P.G. County, which had made known its objections to Site 2 in a letter to the court dated June 28, 1978, did not appeal the July 10 order.[3]

The WSSC and Montgomery County then proceeded with the development of Site 2 as required by the 1978 order. The WSSC filed condemnation proceedings to acquire Site 2 in the Circuit Court for Montgomery

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[3] The District of Columbia appealed that portion of the July 10 order requiring it to construct a compost facility at the Blue Plains plant. This court affirmed the contested portion of the order in an unpublished opinion. State Water Control Bd. v. Washington Suburban Sanitary Commission, No. 78-1671 (D.C. Cir. June 7, 1979).

County, and obtained the requisite permit from the Maryland Department of Health and Mental Hygiene. In May 1979 the WSSC adopted a budget for fiscal year 1980 which included $16.9 million for the acquisition and construction of the Site 2 facility.

P.G. County opposed implementation of Site 2 on several fronts outside the forum of the district court. The County unsuccessfully appealed the issuance of the health permit to the Board of Review of the Maryland State Health Department. It also brought suit in the Circuit Court for Prince George's County seeking to enjoin acquisition of Site 2 on grounds it had never given the requisite approval to WSSC funds allotted to Site 2.[4] The Circuit Court dismissed the complaint, and P.G. County appealed.

In March 1980 implementation of Site 2 encountered more severe obstacles. First, the three WSSC Commissioners from P.G. County blocked funding for Site 2 in WSSC's budget for fiscal year 1981. In addition, the WSSC learned that a title search of the Site 2 land conducted in connection with the condemnation proceeding had revealed that the land was burdened by restrictive covenants[5] which appeared inconsistent with a compost facility and which might cost millions of dollars to acquire. By letter dated March 18, 1980, the WSSC informed the district court of the budget impasse and the covenants.

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[4] Prince George's County v. WSSC, No. E-7692 (Circuit Court for Prince George's County, Maryland, filed Nov. 27, 1979).

[5] The covenants preclude use of the land in any manner which would create objectionable odors, generate dense smoke or high levels of noise, or constitute a "dump or sanitary landfill." P.G. County argued that because the covenants run not only to owners of adjacent properties but also to property owners "in the general neighborhood," a lengthy judicial determination of the composition of the protected class would be required.

Montgomery County then filed a motion in district court on April 4 to compel the WSSC to restore funds for Site 2 to its budget. After a hearing at which P.G. County opposed the motion, the court issued an order on April 25 requiring the WSSC to restore the funds and to take all actions necessary to place Site 2 into operation at the earliest practicable date. On May 8 P.G. County noted an appeal from this order, the first of this group of consolidated cases.

Despite the April 25 order, the three P.G. County WSSC Commissioners declined to vote to reinsert funds for Site 2 in the budget. Consequently on May 14, 1980, Montgomery County moved the district court to cite the three Commissioners for contempt. The Commissioners defended on grounds that the restoration of funds ordered on April 25 was a purely ministerial act which required no Commission vote. After a hearing the district court on June 4 denied the contempt motion but, finding that reinsertion of the funds was a ministerial act, ordered the General Manager of the WSSC to perform it. On June 5 P.G. County sought a stay from the district court of its April 25 and June 4 orders, and on June 10 it noted an appeal from the June 4 order.[6] The district court denied the motion for stay on June 19.

Meanwhile P.G. County had filed two new suits in state court seeking to block implementation of the Site 2 facility. One suit alleged that the state sewage sludge permit was invalid and that Site 2 constituted a prospective nuisance.[7] The second suit alleged that because of

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[6] On November 19, 1980, a motions panel of this court summarily affirmed that portion of the June 4 order which declined to hold the P.G. Commissioners in contempt. *See* United States v. District of Columbia, No. 80-1495 (D.C. Cir. Nov. 19, 1980) (per curiam order).

[7] Calverton County Association v. Buck, No. E-70934 (Circuit Court for Montgomery County, Maryland, filed April 16, 1980).

the restrictive covenants, acquisition of Site 2 would be so costly as to render the WSSC Commissioners liable for breach of fiduciary duty.[8] In this second suit, the Prince George's County Circuit Court on June 17, 1980, issued a temporary injunction forbidding the WSSC from proceeding with the acquisition of Site 2 and ordering it to withdraw a purchase offer it had made to the owners.

WSSC then moved in the district court for an order to protect and effectuate the court's prior judgments, orders and decrees. Following a hearing, the district court on June 27 issued an order which enjoined WSSC from complying with the state court order and further ordered WSSC to proceed expeditiously with development of Site 2; ordered P.G. County to withdraw from the three state court suits relating to Site 2; enjoined all parties from initiating any state court proceeding which would frustrate the district court's orders; and ordered any party believing modification of the court's orders was required to seek such modification only in the district court or in this court.

The last of this group of consolidated cases is P.G. County's appeal of the June 27 order. P.G. County's request for a stay of the order was denied first by the district court on the same day and then by this court on July 3. Two such requests for stay were later denied by the Supreme Court. WSSC has proceeded to comply with the April 25 and June 4 orders, has acquired legal title to Site 2 and has let contracts for the construction of the compost facility.

II. Analysis

A. Tenth Amendment Objections

P.G. County argues that the three challenged district court orders violate principles of federalism embodied in

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[8] Prince George's County v. WSSC, No. E-8512 (Circuit Court for Prince George's County, Maryland, filed April 16, 1980).

the tenth amendment and affirmed in *National League of Cities* v. *Usery*, 426 U.S. 833 (1976). Appellant alleges that the April 25 and June 4 orders of the district court usurped the power of the WSSC to control its own budget, thereby intruding upon an integral function of a state agency. It further alleges that the June 27 order, by prohibiting further collateral challenges to Site 2 in state courts, usurped the power of the state of Maryland to protect the public health and safety of its citizens. Arguing that the Clean Water Act allocated the primary responsibility for eliminating water pollution to the states, appellant concludes that the broad control over the development of Site 2 asserted by the district court exceeded both its powers under the Act and its equity jurisdiction. We find these arguments without merit.

In *National League of Cities* v. *Usery*, the Supreme Court held that extension of the Fair Labor Standard Act's minimum wage and maximum hour provisions to state employees was an impermissible exercise of the commerce power because it impaired state sovereignty guaranteed by the tenth amendment. In a plurality opinion the Court held that the power to determine the wages and hours of employees was an "integral" state function, essential to the separate and independent existence of the states. Justice Blackmun, concurring, interpreted the plurality opinion as mandating a balancing approach, protecting states from federal intrusion only where the federal interest did not outweigh the state interest. Justice Blackmun thought it apparent that *National League of Cities* "does not outlaw federal power in areas such as environmental protection, where the federal interest is demonstrably greater and where state compliance with imposed federal standards would be essential." 426 U.S. at 856.

We agree that whatever the precise limits of the state sovereignty doctrine set forth in *National League*

of Cities,[9] it clearly does not control where, as here, the federal interest has long been recognized as overriding.[10]

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[9] The lower courts have limited *National League of Cities* to legislation which is based on the commerce clause. Thus the Second Circuit has held that the Federal Railway Labor Act, which permits strikes by railroad employees, must yield under *Usery* to a state statute barring strikes by public employees, *see* United Transportation Union v. Long Island Rail Road Co., 634 F.2d 19 (2d Cir. 1980), and the Sixth Circuit has held that employees of a municipal airport were not covered by the Fair Labor Standards Act because operation of the airport was an integral function of city government, *see* Amersbach v. City of Cleveland, 598 F.2d 1033 (6th Cir. 1979). *Compare* State of New Hampshire v. Marshall, 616 F.2d 240 (1st Cir.), *appeal dismissed*, 101 S. Ct. 53 (1980) (rejecting tenth amendment challenge to amendments to Federal Unemployment Tax Act extending benefits to state employees on grounds that statute was enacted under spending power, not commerce power); Cantwell v. County of San Mateo, 631 F.2d 631 (9th Cir. 1980), *cert. denied*, 101 S. Ct. 1703 (1981) (holding federal statute governing retirement pay for reserve military personnel must prevail over state statute, despite *Usery*, because federal statute enacted under Congressional war power); Usery v. Charleston County School District, 558 F.2d 1169 (4th Cir. 1977), and Usery v. Allegheny County Institution District, 544 F.2d 148 (3d Cir. 1976), *cert. denied sub nom.* Allegheny County Institution District v. Marshall, 430 U.S. 946 (1977) (rejecting tenth amendment challenges to application of Equal Pay Act to state and local governments on grounds Act was exercise of Congressional power under Fourteenth Amendment).

[10] In Illinois v. City of Milwaukee, 406 U.S. 91 (1972), the Court, in an opinion recognizing the existence of a federal common law concerning interstate water pollution, stated:

> The Federal Water Pollution Control Act in § 1(b) declares that it is federal policy "to recognize, preserve, and protect the primary responsibilities and rights of the States in preventing and controlling water pollution." But the Act makes clear that it is federal, not state, law that in the end controls the pollution of interstate or navigable waters.

Id. at 102 (footnote omitted).

The Supreme Court has recently described the 1972 amendments to the Federal Water Pollution Control Act as "a comprehensive program for controlling and abating water pollution." *City of Milwaukee* v. *Illinois*, 49 U.S.L.W. 4445, 4449 (April 28, 1981) (*quoting Train* v. *City of New York*, 420 U.S. 35, 37 (1975)). While it is clear that Congress contemplated that the states would play an active role in this effort, it is equally clear it did not contemplate that a subdivision of one state would have the power to block a regional plan for sewage disposal, thereby causing injury not only to its own state government but to neighboring states as well. *Cf. United States* v. *Duracell International, Inc.*, No. 80-1017 (M.D. Tenn. Mar. 16, 1981) (rejecting tenth amendment challenge to provision of Clean Water Act holding liable any state which prevents municipality from complying with Act).

The courts have recognized the breadth of this federal interest and have upheld federal environmental legislation which, like the Clean Water Act, requires state implementation while leaving the states latitude to make essential choices. *See United States* v. *Ohio Department of Highway Safety*, 635 F.2d 1195 (6th Cir. 1980), *cert. denied*, 49 U.S.L.W. 3801 (April 28, 1981) (upholding authority of EPA under Clean Air Act to require a state to deny registration to vehicles which have not passed mandatory inspection); *District of Columbia* v. *Train*, 521 F.2d 971 (D.C. Cir. 1975), *vacated as moot sub nom. EPA* v. *Brown*, 431 U.S. 99 (1977) (same).[11]

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[11] At issue in District of Columbia v. Train was an EPA transportation control plan under the Clean Air Act for the National Capital Region. This court affirmed the regulations in part but struck down a portion of the plan which required area jurisdictions to adopt automobile inspection and maintenance programs and to retrofit certain vehicles with pollution control devices. The court held that that portion of the regulations, by substituting compelled state regulation for

When necessary the courts have exercised broad equitable powers to ensure state compliance with federal environmental laws, even where the exercise of such powers has necessitated the bypassing of normal state decisional processes. Thus after Detroit failed to comply with a consent decree concerning sewage disposal, the district court appointed the Mayor of Detroit as administrator of the treatment plant, and directed him to act "without the necessity of any actions on the part of the Common Council of the City of Detroit when in the judgment of the Administrator the same might unavoidably delay or impede" compliance. *United States* v. *City of Detroit*, 476 F. Supp. 512, 515 (E.D. Mich. 1979); *cf. Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979) (sanctioning district court's direct supervision of state fisheries where necessary to secure compliance with its order recognizing Indian rights).

The weakness of appellant's federalism argument is underscored by the fact that it, along with other regional jurisdictions, agreed that the district court should have continuing authority to enforce the 1974 consent decree. P.G. County voluntarily intervened in the initial suit

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permissible federal regulation, exceeded the scope of the commerce power, 521 F.2d at 992, and was such a "drastic" invasion of state sovereignty as to violate the tenth amendment, *id.* at 994. Appellant invokes *Train* to argue that the district court orders in this case are likewise an impermissibly "drastic" invasion of state sovereignty. We find the analogy unpersuasive. The *Train* court emphasized that the regulations invalidated there forced "unconsenting" states to administer and enforce a federal program. *Id.* at 992. In this case, however, appellant, along with other area jurisdictions, entered into a consent decree and agreed that the district court should retain power to enforce it. In addition, the nature of state action required by the district court in this case is significantly less intrusive on state sovereignty than the ongoing state regulatory program invalidated in *Train*.

in 1973 and was a signatory to the consent decree which emerged from that suit. Like the other parties to that agreement, appellant failed to comply with the deadlines it had agreed to meet, thereby necessitating enforcement of the agreement by the district court. The tenth amendment cannot be used to bar the very enforcement mechanism agreed to in 1974. *Cf. Brown* v. *Neeb*, 25 Fair Empl. Prac. Cases 267 (Lab. Rel. Rep. BNA) (6th Cir. Mar. 3, 1981) (affirming district court order requiring city, which had ordered layoffs from fire department due to budget crisis, to comply with prior consent decree concerning hiring of minorities by making layoffs proportionate to racial composition of the department, even though collective bargaining agreement and state law provided that layoffs should be on basis of seniority).

Thus we find that the district court did not exceed its statutory or equitable authority and that no interest protected by the tenth amendment has been infringed.

B. Anti-Injunction Act Objections

Appellant's second contention is that the district court's order of June 27 violates the Anti-Injunction Act, 28 U.S.C. § 2283, which provides:

> A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

The Supreme Court has noted that the purpose of the Act, which rests on the fundamental constitutional independence of the states and their courts,[12] is to prevent

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[12] Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 287 (1970).

"needless friction between state and federal courts." [13] The Court has applied the Act strictly,[14] stating that it is an "absolute prohibition" against any injunction of any state court proceedings that does not fall within one of the three specifically defined exceptions in the Act.[15] The issue for decision, then, is whether the June 27 order falls within one of the three exceptions.

The district court relied primarily, as do appellees before this court, on the last of the three exceptions, which permits a federal court to enjoin a state proceeding in order to "protect or effectuate" its judgments.[16]

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[13] Mitchum v. Foster, 407 U.S. 225, 233 (1972), *quoting* Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U.S. 4, 9 (1939).

[14] 7 Moore's Federal Practice ¶ 60.39[2], at 657 (2d ed. 1979).

[15] Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 630 (1977). The United States has argued before this court that the Act does not apply where, as here, one of the litigants seeking to enjoin state proceedings is the federal government. The Supreme Court so held in two cases, reasoning that the policy behind the Act is far less compelling where a stay is sought to protect "superior federal interests." *See* National Labor Relations Bd. v. Nash-Finch Co., 404 U.S. 138, 146 (1971); Leiter Minerals, Inc. v. United States, 352 U.S. 220, 226 (1957). The status of this implied exception is left unclear in other decisions of the Court which stress that the three specific statutory exceptions are exclusive and "should not be enlarged by loose statutory construction." Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 287 (1970). Because this issue is raised for the first time on appeal and because its resolution is unnecessary to our disposition of this case, we express no view on whether the participation of the federal government in this case renders § 2283 inapplicable.

[16] The district court also adverted to, and the appellees secondarily rely on, the second exception, which permits an injunction "in aid of" the federal court's jurisdiction. The Reviser's Note to § 2283 states that the "in aid of" language

Known as the "relitigation" exception, the "protect or effectuate" language was intended to affirm the power of federal courts to enjoin the relitigation of cases and controversies fully adjudicated by such courts.[17] The Supreme Court has construed the exception to mean that a state court may be prevented "from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atlantic Coast Line Railroad Co.* v. *Brotherhood of Locomotive Engineers*, 398 U.S. 281, 295 (1970).

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was intended "to conform to section 1651 of this title [the All Writs Act, 28 U.S.C. § 1651] and to make clear the recognized power of the Federal courts to stay proceedings in state cases removed to the district courts." The "in aid of" exception has also been construed to allow a federal court to protect its prior jurisdiction over a res by enjoining a state proceeding that interferes therewith. 1A Moore's Federal Practice ¶ 0.225, at 2617 (2d ed. 1981); 17 Wright, Miller & Cooper, Federal Practice and Procedure § 4225 (1978). Professor Wright has suggested that the "in aid of" exception also encompasses cases "where a district court has taken a controversy in hand and will exercise continuing jurisdiction," *id.*, reasoning that state court intervention in such a controversy would seriously impair the power of the district court to decide the case, and citing Swann v. Charlotte-Mecklenburg Board of Education, 501 F.2d 383 (4th Cir. 1974), and Grenchik v. Mandel, 373 F. Supp. 1298 (D. Md. 1973). Because the Supreme Court has indicated that there is some overlap between the "protect or effectuate" and "in aid of" exceptions, *see* Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 295 (1970), we believe that either of the exceptions provides ample justification for the June 27 order.

[17] Reviser's Note to 28 U.S.C. § 2283. The exception was intended to overrule Toucey v. New York Life Insurance Co., 314 U.S. 118 (1941), in which the Supreme Court had held that federal courts lacked the power to enjoin relitigation in state court of controversies adjudicated in federal court.

Appellant argues that this exception should be read narrowly to permit an injunction only where the state proceeding involves the same cause of action as did the federal proceeding. Appellant contrasts the cause of action in the federal suit, to ensure compliance with the Clean Water Act by providing for sludge disposal, with the causes of action in the enjoined state proceedings, which involve issues such as compensability of restrictive covenants under Maryland property law. Appellant concludes that the state suits are collateral to, rather than duplicative of, the federal suit and that therefore the relitigation exception does not apply.

We believe, however, that *Atlantic Coast Line* mandates an examination of the effect a state proceeding would have on a prior federal judgment, rather than a comparison of formal causes of action. Where a state court enjoins a course of conduct which is necessary to comply with a prior federal court order, the federal court has authority to effectuate its order by enjoining the state proceeding. In *Doe* v. *Ceci*, 517 F.2d 1203 (7th Cir. 1975), a federal district court had enjoined a county hospital from refusing to permit its medical personnel to perform elective abortions within the hospital. Subsequently a state court entered an order restraining county officials from disbursing any county funds for elective abortions. The district court enjoined enforcement of the state court order and the Seventh Circuit affirmed on grounds that such action was "necessary to effectuate the earlier order of the federal court and thus not in contravention of 28 U.S.C. § 2283." *Id.* at 1204. *See also Henry* v. *First National Bank of Clarksdale*, 595 F.2d 291, 306-07 (5th Cir. 1979), *cert. denied sub nom. Claiborne Hardware Co.* v. *Henry*, 444 U.S. 1074 (1980); *Thomason* v. *Cooper*, 254 F.2d 808 (8th Cir. 1958); *Baker* v. *Gotz*, 415 F. Supp. 1243 (D. Del.), *aff'd mem.*, 546 F.2d 415 (3d Cir. 1976). Thus the district court plainly acted within its authority in enjoining

the WSSC from complying with the June 17 order of the Circuit Court for Prince George's County.

The State of Maryland, while acknowledging the power of the district court to stay the Prince George's Circuit Court injunction, joins appellant in arguing that the June 27 order was overly broad in enjoining both pending state proceedings which had not progressed to final judgment and prospective state litigation concerning Site 2. The law is clear, however, that a federal court is not required to await a final judgment by a state court before acting to protect its own decrees.[18]

Where proceedings in a federal court have been ongoing for several years, as they have here, state proceedings which would frustrate the federal court's effective disposition of the case have frequently been enjoined even where the state proceedings have not yet progressed to final judgment. Many of these cases have involved school desegregation orders. *See Swann v. Charlotte-Mecklenburg Board of Education*, 501 F.2d 383 (4th Cir. 1974); *Grenchik v. Mandel*, 373 F. Supp. 1298 (D.

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[18] In Brown v. O'Brien, 469 F.2d 563 (D.C. Cir.), *vacated as moot*, 409 U.S. 816 (1972), the Credentials Committee of the Democratic Party had ruled that challenged delegates from Illinois should be unseated and replaced. The unseated delegates challenged this action in suits filed in both state and federal court. In the federal suit, the defendant Democratic Party filed a counterclaim, seeking to enjoin prosecution of the state court action. The district court upheld the action of the Credentials Committee but denied an injunction. This court affirmed the judgment dismissing the complaint but remanded for an injunction against the state court proceeding, finding that an injunction was necessary to prevent the state court from "taking any action in any other court that would impair the effectiveness and the integrity of the judgments of this Court." 469 F.2d at 574. *See also* Donelon v. New Orleans Terminal Co., 474 F.2d 1108 (5th Cir.), *cert. denied*, 414 U.S. 855 (1973).

Md. 1973).[19] In *New York State Association for Retarded Children, Inc.* v. *Carey*, 456 F. Supp. 85 (E.D.N.Y. 1978), the district court enjoined a state proceeding which would have interfered with its disposition of a civil rights case over which it had acquired jurisdiction five years earlier, noting that the state court plaintiffs' claims would properly have been brought before the federal court. *Id.* at 97. In this case, too, we believe that if P.G. County believed changed circumstances required modification of the 1978 order, it was obligated to seek such modification in the district court, which ordered the implementation of Site 2 in 1978.

Thus we conclude that it was within the district court's discretion to enjoin P.G. County's participation in the three pending proceedings in Maryland state courts in which the relief sought would have frustrated the district court's "flexibility and authority" to enforce its 1978 order. The injunction against prospective state court litigation concerning Site 2, being outside the scope of § 2283,[20] is likewise valid. In sum, we find no violation

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[19] Appellant argues that the foregoing cases are distinguishable because they involve protection of individual constitutional rights, as to which the federal injunctive power is singularly broad. Whatever the validity of this suggestion as a general proposition, it has no relevance in the context of § 2283, which allows a federal court to enjoin state proceedings in order to "protect or effectuate" its judgments in any type of proceeding. *See* Samuel C. Ennis & Co. v. Woodmar Realty Co., 542 F.2d 45 (7th Cir. 1976), *cert. denied*, 429 U.S. 1096 (1977) (action in state court against trustee in bankruptcy enjoined by federal court which had conducted bankruptcy proceeding years earlier); Baker v. Gotz, 415 F. Supp. 1243 (D. Del.), *aff'd mem.*, 546 F.2d 415 (3d Cir. 1976) (enjoining state court sequestration of notes which conflicted with prior district court determination that sequestration was not an available remedy).

[20] Section 2283 bars injunctions only of existing state court proceedings and has no application before such proceedings

of the Anti-Injunction Act or of equitable principles in the June 27 injunction order.

III. Conclusion

We find that neither the tenth amendment nor the Anti-Injunction Act was violated by the three district court orders challenged here. We also find appellant's other arguments, that evidentiary hearings were required before issuance of the orders and that the June 27 injunction was unwarranted under traditional equitable criteria, without merit. We believe that the actions taken by the district court were necessary to effectuate its 1978 order and to ensure the long overdue implementation of a regional sludge management plan. Accordingly, the judgment of the district court is

Affirmed.

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have begun. In a case where equitable principles warrant relief, a party may be enjoined from instituting proceedings in a state court. 1A Moore's Federal Practice ¶ 0.208[3.-1], at 2316 (2d ed. 1981); 17 Wright, Miller & Cooper, Federal Practice and Procedure § 4222 (1978).

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1495 **September Term, 1979**

United States of America CA 77-1929

v.

District of Columbia, et al.

Prince George's County, Maryland
(Intervenor-deft.),
Appellant

United States Court
of Court
for the District of
Columbia Circuit
Filed JUL 25 1980

GEORGE A. F.
Clerk

No. 80-1496 CA 1813-73
State Water Control Board, et al.

v.

Washington Suburban Sanitary
Commission, et al.

Prince George's County, Maryland,
(Intervenor-deft.),
Appellant

No. 80-1653 CA 1813-73
State Water Control Board, An
Agency of the Commonwealth of
Virginia, et al.

v.

Washington Suburban Sanitary
Commission, et al.

Prince George's County, Maryland,
(Intervenor-deft.),
Appellant

No. 80-1654 CA 77-1929
United States of America

v.

District of Columbia, et al.

Prince George's County Maryland,
Appellant

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1718 **September Term, 1979**

State Water Control Board, et al. CA 1813-73

v.

Washington Suburban Sanitary Commission, et al.

Prince George's County Maryland,
Appellant

and consolidated case No. 80-1719

ORDER

IT IS ORDERED, *sua sponte*, that these cases are consolidated.

For the Court:
GEORGE A. FISHER, Clerk

By: /s/
Daniel M. Cathey
First Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE WATER CONTROL BOARD, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 1813-73
WASHINGTON SUBURBAN SANITARY COMMISSION, et al.,	:	
Defendants.	:	FILED JUN 27 1980
	:	JAMES F. DAVEY, Clerk
UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
v.	:	Civil Action No. 77-1929
DISTRICT OF COLUMBIA, et al.,	:	
Defendants.	:	

ORDER

Upon consideration of the Motion of Prince George's County, Maryland, for a Stay of the Court's June 27, 1980, Order, and the oral arguments of its counsel and the counsel for Washington Suburban Sanitary Commission, it is hereby found by this Court that the Motion for Stay is without merit. This Court's June 27, 1980, Order, enjoining the parties to this case from attempting to circumvent this Court's prior judgments, orders and decrees, is manifestly justified and necessary.

This Court has both the power and the responsibility to enjoin the parties before it from petitioning various state courts to obtain equitable relief allowing them to ignore portions of this Court's decrees or compelling others to ignore portions of this Court's decrees. In the absence of such an Order, this Court's decrees will be rendered meaningless, the comprehensive metropolitan area sewage plan created by this Court over the past six years will be destroyed, and the public interest will suffer.

Prince George's County, therefore, has failed to demonstrate any reason why a stay should be granted. Moreover, the public health and welfare require that the long overdue and much needed composting facility be constructed without delay. It is, accordingly,

ORDERED, this 27th day of June, 1980, that the Motion for Stay, filed by Prince George's County, Maryland, is denied.

John Lewis Smith, Jr.
United States District Court

8:30 p.m.
June 27, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE WATER CONTROL BOARD, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 1813-73
WASHINGTON SUBURBAN SANITARY COMMISSION, et al.,	:	
Defendants.	:	FILED JUN 27 1980
	:	JAMES E. DAVEY, Clerk
UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
v.	:	Civil Action No. 77-1929
DISTRICT OF COLUMBIA, et al.,	:	
Defendants.	:	

ORDER

Upon consideration of the Motion of Defendant Washington Suburban Sanitary Commission for Entry of an Order to Protect and Effectuate this Court's Judgments, Orders, and Decrees and memorandum in support thereof, arguments of counsel presented at a hearing on June 27, 1980, and the entire record herein, and it appearing to the Court that:

(1) Jurisdiction of this Court in the instant cause has been invoked pursuant to, *inter alia*, the Federal Water Pollution Control Act, 33 U.S.C. § 301, *et seq.*

(2) Prince George's County, Maryland, Montgomery County, Maryland, and the State of Maryland all sought and received permission to intevene as parties defendant.

(3) On July 29, 1974, with the consent of all parties hereto, including Prince George's County, Maryland, Montgomery County, Maryland, and the State of Maryland, this Court entered a Consent Decree which, *inter alia,*

(a) Contained a comprehensive agreement and plan regarding management of sewage produced in the respective party-jurisdictions, including detailed provisions concerning disposition of digested and undigested sludge.

(b) Clearly stated that the provisions of the decree applied to, and were binding upon, the parties, their agents, servants, successors, and all persons, firms and corporations acting under, through or for them and upon those persons, firms and corporations in active concert or participation with them.

(c) Provided that this Court retain jurisdiction in order to enforce the provisions of this Decree and to order any appropriate relief for violation thereof.

(4) On July 10, 1978, due to the failure of the parties to agree on a method for disposition of the sewage sludge generated at the Blue Plains Treatment Plant after September 21, 1978, and finding that there existed an emergency affecting the health and safety of the residents of the Washington metropolitan area, this Court, in pursuance of its jurisdiction under the 1974 Consent Decree, entered an order which, *inter alia,*

(a) Ordered that sludge disposal be conducted at

certain locations specified in the order, including Site 2 in Montgomery County.

(b) Directed that the Washington Suburban Sanitary Commission (WSSC) take all actions necessary to manage sludge on the Maryland sites designated in the order, including, but not limited to, acquisition of property rights, obtaining of all required permits, design, construction and operation.

(c) Required all parties to take all steps necessary to expedite review and processing of permit applications of the parties, their agents or contractors.

(d) Prohibited all user jurisdictions from taking any action, unrelated to the protection of public health, to prevent the disposal or composting of sludge from the Blue Plains Plant under this order.

(e) Confirmed review of the submission of the Calverton Citizens Associations and provided that Montgomery County, through the WSSC take the measures necessary to assure protection of the public health, safety and welfare in the implementation of Site 2.

(5) On April 25, 1980, in view of the failure of WSSC Commissioners from Prince George's County to join in approving the inclusion of Site 2 in the WSSC budget, this Court ordered all parties to continue to adhere to the order of July 10, 1978 and ordered the Washington Suburban Sanitary Commission (i) to put Site 2 back into its budget, (ii) to take all actions necessary to manage sludge on Site 2, including, but not limited to, acquiring all property rights, and (iii) to place Site 2 into operation at the earliest practicable date.

(6) On June 4, 1980, upon motion of Montgomery County to hold the WSSC Commissioners from Prince

George's County in contempt for failure to vote Site 2 back into the WSSC budget, this Court ordered the General manager of the Commission to include Site 2 in the WSSC capital and operating budgets.

(7) Prince George's County has appealed to the United States Court of Appeals for the District of Columbia Circuit from entry of this Court's orders of April 25, 1980 and June 4, 1980.

(8) Prince George's County did not appeal this Court's orders of July 10, 1978 and did not seek stay of this Court's orders of April 25, 1980 and June 4, 1980 until June 4, 1980 when it filed a motion for stay which was oposed by other parties and denied by this Court on June 19, 1980.

(9) Prince George's County, in concert with the Calverton Citizens Association and certain residents of the Calverton area, both of which are represented by the same counsel who made written submissions to this Court on behalf of the Calverton Citizens Association in connection with this Court's order of July 10, 1978, has recently filed various actions in the Circuit Courts for Prince George's County and Montgomery County seeking relief which, if granted, would impede and frustrate the WSSC and other parties hereto from complying with this Court's orders of July 10, 1978, April 25, 1980, and June 4, 1980.

(10) On June 17, 1980, in one of the actions brought by Prince George's County, the Circuit Court for Prince George's County entered an order which, *inter alia,* enjoined the WSSC from expending any funds on Site 2 and directed the WSSC to seek a continuance of the Site 2 condemnation trial, scheduled to commence in Montgomery County Circuit Court on June 30, 1980.

Dissolution of this order is necessary in aid of this Court's jurisdiction in this matter and to protect and effectuate its judgments, decrees, and orders.

(11) If the parties to this case are allowed to pursue in various state courts collateral attacks on this Court's orders, judgments, and decrees, effectuation of the comprehensive regional sewage program established by the 1974 Consent Decree and subsequent implementing orders will be impossible. Further pollution of the Potomac River and violations of the Federal Water Pollution Control Act will inevitably follow. The public interest clearly necessitates that all challenges and objections to that comprehensive program be heard and decided in this Court and, if necessary, in the United States Court of Appeals in order to avoid the delay, expense, and inconsistent adjudications incident to litigation of these issues in diverse state and federal forums.

IT IS, THEREFORE, THIS 27TH DAY OF JUNE, 1980, ORDERED AS FOLLOWS:

(1) Defendant Washington Suburban Sanitary Commission is hereby enjoined from complying with the June 17, 1980 Order of the Circuit Court for Prince George's County, entered in Equity No. E-8512, and is further enjoined to proceed expeditiously with condemnation proceedings, purchase negotiations, and all other actions necessary to acquire Site 2 and establish there a sludge composting facility at the earliest practicable date.

(2) No later than June 30, 1980, intervenor-defendant Prince George's County, Maryland, shall file appropriate papers in the Circuit Courts for Prince George's and Montgomery Counties (a) advising both courts of the entry and the exact content of the instant

order; (b) affirming its intent to fully comply with the instant order unless and until it is stayed or reversed; (c) moving the Circuit Court for Prince George's County for dissolution of its June 17, 1980 order on grounds that that order threatens to frustrate and impede orders entered by this Court in these proceedings; and (d) withdrawing the complaints that it has filed against other parties to this action for relief which, if granted, would impede or frustrate effectuation of any orders entered by this Court in these proceedings. The state court actions embraced by this paragraph include, but are not limited to, *Prince George's County v. Washington Suburban Sanitary Commission* (Equity No. E-7692, Circuit Court for Prince George's County); *Prince George's County, et al., v. Washington Suburban Sanitary Commission* (Equity No. E-8512, Circuit Court for Prince George's County); and *Calverton Citizens Association, Inc., et al., v. Buck, et al.* (Equity No. E-70934, Circuit Court for Montgomery County).

(3) All parties to this action, and all persons, firms, and corporations in active concert or participation with them, are hereby enjoined from taking any actions, including initiation or continuation of any state court proceedings against other parties to this action, which would frustrate or impede effectuation of this Court's judgments, decrees, and orders, or interfere with its jurisdiction herein.

(4) Any party which believes it has good ground for seeking modification of or relief from any of this Court's orders herein, including, but not limited to, its orders of July 10, 1978, April 25, 1980, and June 4, 1980, shall seek such judicial action only in this Court or in the United States Court of Appeals for the District of Columbia Circuit.

(5) Any person, firm or corporation, not a party hereto, who believes there exists good ground for modification or rescission of any order entered herein, including, but not limited to, a contention that changed circumstances since July 10, 1978 dictate that another site be substituted for Site 2 in this Court's order of that date, or believes it has other interests pertinent to the proceedings herein, may seek such action herein by filing a motion for limited intervention outlining the nature of the proposed intervenor's interest, the action desired by this Court, and the reasons and evidence in support thereof.

John Lewis Smith, Jr.
United States District Court
6/27/80

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE WATER CONTROL BOARD, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 1813-73
WASHINGTON SUBURBAN SANITARY COMMISSION, et al.,	:	
Defendants.	:	FILED JUN 20 1980
	:	JAMES E. DAVEY, Clerk
UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
v.	:	Civil Action No. 77-1929
DISTRICT OF COLUMBIA, et al.,	:	
Defendants.	:	

ORDER

This Court, having been advised of the entry on June 17, 1980, of the Circuit Court for Prince George's County, Maryland, Order, attached as Appendix A hereto, and it appearing to the Court that that Order threatens to frustrate and impede certain parties, including the Washington Suburban Sanitary Commission, from complying with this Court's Order of April 25, 1980, it is, this 20 day of June, 1980,

ORDERED, that the parties to this action and those additional persons designated on Appendix B hereto are

directed to appear before this Court at 11:00 a.m. on June 27, 1980, to show cause why this Court should not take immediate, appropriate action to ensure that its Order of April 25, 1980 will be fully and effectively implemented.

John Lewis Smith, Jr.
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing proposed order were served, via first-class mail, postage prepaid, this 19th day of June, 1980, on all persons listed on the service list attached to the order as Appendix B.

John P Arness
Attorney for Washington
Suburban Sanitary Commission

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE WATER CONTROL BOARD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 1813-73
WASHINGTON SUBURBAN SANITARY COMMISSION,	)	
	)	
	)	FILED
Defendants.	)	JUN 19 1980
	)	JAMES F. DAVEY, Clerk
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	No. 77-1929
DISTRICT OF COLUMBIA, et al.,	)	
Defendants.	)	

ORDER

Upon consideration of Prince George's County's motion for stay of the order of court of April 25 and June 4, 1980 pending appeal, the memoranda in opposition filed thereto by Montgomery County and United States of America, it is by the Court this 19 day of June 1980

ORDERED that the motion for stay is denied.

United States District Judge

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

PRINCE GEORGE'S COUNTY, MARYLAND	:	
Petitioners	:	
	:	Equity
v.	:	No. E-8512
	:	
WASHINGTON SUBURBAN SANITARY COMMISSION	:	ORDER
Respondent	:	FILED JUNE 17, 1980

Upon consideration of the pleadings, affidavit, and representations of counsel, it is this 17th day of June 1980, by the Circuit Court for Prince George's County, Maryland, sitting in Equity

ORDERED, ADJUDGED AND DECREED that WSSC, its officers, employees and agents be and hereby are temporarily enjoined from appropriating or expending any funds for the acquisition of Montgomery County Site Two; and it is further

ORDERED that the WSSC is temporarily enjoined from taking any further actions relating to Law Nos. 50,304, 50,305 in the Montgomery County Court which are inconsistent with this Order, and it is further

ORDERED that the WSSC shall immediately withdraw the offer made to the property owners in the condemnation actions on June 13, and it is further

ORDERED that the parties shall if possible, complete all discovery by July 22, and it is further

ORDERED that a pre-trial conference is scheduled for July 23 at 8:30 a.m., and it is further

ORDERED that all motions to be filed in the case shall be set in on July 23, 1980, if it can be arranged with the Assignment Office on June 17, and it is further

ORDERED that a hearing on the merits shall be set in August, 1980, and it is further

ORDERED that the WSSC shall seek to continue the hearing set for June 30 in Law Nos. 50,304 and 50,305 in the Montgomery County Circuit Court and it is further

ORDERED that the parties shall fix the dates described herein with the Assignment Office on June 17.

/s/

JUDGE

TRUE COPY-TEST
/s/
No. 56 6/17/80

SERVICE LIST

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE WATER CONTROL BOARD, et al.,)

Plaintiffs,

v.) Civil Action No. 1813-73

WASHINGTON SUBURBAN SANITARY COMMISSION, et al.,

Defendants.

FILED
JUN 4 1980
JAMES F. DAVEY, Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.) Civil Action No. 77-1929

DISTRICT OF COLUMBIA, et al.,
Defendants.

ORDER

Having considered the pleadings and papers, and arguments of counsel, on the motion of Montgomery County to cite Washington Suburban Sanitary Commissioners Johanna S. Norris, Andrew M. Vislosky, and Lawrence L. Brooks for contempt, the Court concludes:

(1) The inclusion of Site 2 in the FY 1981-86 CIP and the FY 1981 Capital and Operating Budgets of the Washington Suburban Sanitary Commission was required

by the Court's order of July 10, 1978, as specifically reaffirmed by the Court's order of April 25, 1980; and

(2) Paragraph (a) of the Court's order of April 25, 1980, required only ministerial steps for its implementation and the General Manager of the Commission is hereby directed to include Site 2 in the FY 1981-86 CIP and the FY 1981 Capital and Operating Budgets.

For these reasons, the Court has determined that Montgomery County's motion to cite for contempt should be denied. Therefore,

IT IS ORDERED that the motion of Montgomery County to cite Washington Suburban Sanitary Commissioners Johanna S. Norris, Andrew M. Vislosky, and Lawrence L. Brooks for contempt of the order of April 25, 1980, is hereby denied.

_____

United States District Judge

Dated: June 4, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE WATER CONTROL BOARD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 1813-73
WASHINGTON SUBURBAN SANITARY COMMISSION, et al.,	)	
	)	FILED
Defendants.	)	APRIL 25, 1980
	)	JAMES E. DAVEY, Clerk
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	No. 77-1929
DISTRICT OF COLUMBIA, et al.,	)	
Defendants.	)	

ORDER

Upon consideration of Montgomery County's Motion to Compel the WSSC to Comply with the Order of Court dated July 10, 1978, all pleadings, the entire record herein, and argument of counsel, it is by the Court this 25 day of April 1980

ORDERED that all parties continue to adhere to the Order filed by this Court on July 10, 1978, and it is further

ORDERED that the Washington Suburban Sanitary Commission:

(a) put Site 2 back into the FY 1981-86 CIP and FY 1981 Capital and Operating Budgets; and

(b) take all actions necessary to manage sludge on Site 2, including, but not limited to, acquiring all property rights including any covenant enforcement rights, obtaining all required design, construction, and operation permits as required by this Court in the July 10 Order; and

(c) place Site 2 into operation at the earliest practicable date; and

(d) promptly notify the Court and all parties of the dates necessary property rights are acquired, construction commences, and operation begins.

/s/

United states District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE WATER CONTROL BOARD;
COMMONWEALTH OF VIRGINIA;
FAIRFAX COUNTY, VIRGINIA;
and DISTRICT OF COLUMBIA,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Intervenor-Plaintiff,

v.

WASHINGTON SUBURBAN SANITARY COMMISSION, et al.,

Defendants.

and

MONTGOMERY COUNTY and PRINCE GEORGE'S COUNTY, MARYLAND
Intervenor-Defendants.

UNITED STATES OF AMERICA,

Plaintiff,

v.

DISTRICT OF COLUMBIA, et al.,
Defendants.

Civil Action No. 1813-73

FILED
JUN 10 1980
JAMES F. DAVEY, Clerk

Civil Action No. 77-1929

ORDER

Due to the failure of the users of the Blue Plains Sewage Treatment Plant to agree on a method for disposition of the sewage sludge generated at the plant after September 21, 1978, the District of Columbia will be forced to curtail or eliminate treatment of sewage at the Blue Plains Plant after that date unless the users are required to dispose of the sludge from the plant. It is beyond dispute that the curtailment or elimination of the treatment processes at the plant would violate Section 301(a) of the Federal Water Pollution Control Act, 33 U.S.C. § 1311(a), and cause substantial harm to the Potomac River into which the plant discharges. The user jurisdictions are presently in violation of the Court's order of January 1978 amending its order of July 29, 1974, requiring that they agree on a permanent metropolitan-wide sludge disposal plan by January 15, 1978. The user jurisdictions' failure to agree on such a plan is the major cause of the current emergency situation which raises the possibility of a shutdown of the Blue Plains Plant. On the basis of this factual background, the Court has directed, by orders dated May 18 and June 12, 1978, that feasibility reports be prepared by the user jurisdiction and sites be designated by them for disposition of the sludge from the Blue Plains Plant for a period of at least one year beginning September 21, 1978.

Upon consideration of the reports, designations, and other submissions of the parties, the parties; oral presentations, and other materials in the record of these cases and on the basis of the existence of an emergency affecting the health and safety on the residents of the Washington metropolitan area, it is hereby ordered that the District of Columbia, Washington Suburban Sanitary Commission (the WSSC), Montgomery County, Prince George's County, and Fairfax County shall take the following actions to

accomplish composting or disposal of sewage sludge from the Blue Plains Treatment Plant in a safe, environmentally acceptable manner after September 21, 1978 for a period of at least one year:

1. Undigested Sludge

a. Beginning on September 21, 1978 and continuing through December 3, 1978, Prince George's County, through the WSSC, shall dispose of quantities of undigested sludge from the Blue Plains Plant at its P.G. 4 site equal to its proportional share, its proportional share of the District's proportional share, Montgomery County's proportional share and Montgomery County's proportional share of the District's proportional share of the undigested sludge from the Blue Plains Treatment Plant.

b. Beginning on December 4, 1978 and continuing through the date on which the District of Columbia's composting facility at the Blue Plains Denitrification site is completed or February 15, 1979, whichever occurs first, Montgomery County, through the WSSC, shall dispose of quantities of undigested sludge from the Blue Plains Plant equal to its proportional share, its proportional share of the District's proportional share, Prince George's County's proportional share, and Prince George's County's proportional share of the District's proportional share of the undigested sludge from the plant on approximately 30 acres of a side owned by Montgomery County, Maryland, and located between Shiloh Church Road and Interstate 70 near Clarksburg in Montgomery County, Maryland, or at a site owned by the State of Maryland and located near Seneca along the Potomac River in Montgomery County, Maryland.

c. After completion of the District's composting facility at the Blue Plains denitrification site or February 15, 1979,

whichever occurs first, Montgomery County and Prince George's County shall no longer be responsible for managing the District of Columbia's proportional share of undigested sludge from the plant. However, Montgomery County, through the WSSC, shall continue to dispose of such amounts of undigested sludge to "reimburse" Prince George's County for the Montgomery County's proportional share and Montgomery County's proportional share of the District's proportional share disposed of by Prince George's County under paragraph a above and at successor facilities, as well as such amounts needed to attain parity for amounts disposed of prior to September 21, 1978. Montgomery County, through the WSSC, shall contInbue to manage the remainder at the above-described sites and at composting facilities at a site owned by Contee Sand and Gravel Company and Montgomery Industrial Park, Inc., and located adjacen t to the Montgomery Industrial Park on Route 29 in Montgomery County, Maryland. Montgomery County, through the WSSC, shall have said composting facilities operational by July 1, 1979.

d. The District of Columbia shall begin construction immediately and shall complete by February 15, 1979 construction of composting facilities located at the Blue Plains Plant on the area currently reserved for the denitrification process units. Beginning on that date the District shall compost its proportional share of the undigested sludge from the Blue Plains Plant, plus additional quantities to "reimburse" the other user jurisdictions in kind for disposal by them of the District of Columbia's proportional share of undigested sludge from the plant between September 21, 1978 and the commencement of operations of the District's composting facilities.

e. Beginning on September 21, 1978 and continuing un-

til September 21, 1979, Fairfax County, Virginia shall dispose of quantities of undigested sludge from the plant by incineration, in accordance with the County's June 5, 1978 submission, equal to its proportional share of undigested sludge from the Blue Plains Plant. The County shall also dispose of its proportional share of the District of Columbia's share of undigested sludge from the plant until the District of Columbia's composting facilities at the Blue Plains denitrification site are prepared for use, or February 15, 1979, whichever occurs first.

2. Digested Sludge:

a. Montgomery and Prince George's Counties, through the WSSC, and Fairfax County shall dispose of their proportional shares of digested sludge from the Blue Plains Plant in accordance with their submissions filed with the Court, beginning on September 21, 1978 and continuing through September 21, 1979. In addition, each of said parties shall dispose of their respective proportional shares of the District of Columbia's proportional share of digested sludge from the plant from September 21, 1978 through February 15, 1979 or completion of the District's composting facility, whichever occurs first.

b. Thereafter, through September 21, 1979, the District of Columbia shall compost its proportional share of digested sludge from the plant to the maximum extent feasible at its Blue Plains Plant composting facility after its undigested sludge has been composted at the site. The other user jurisdictions shall dispose of any portion of the District's proportional share of digested sludge which cannot be composted at the Blue Plains composting site, with each user jurisdiction disposing of its respective proportional share of the excess digested sludge.

3. The Washington Suburban Sanitary Commission shall take all actions necessary to manage sludge on the Maryland sites designated in this order, including but not limited to, acquisition of property rights, obtaining of all required permits, design, construction and operation.

4. The District of Columbia shall continue to be responsible for the transportation of sludge to all sites designated in this order in accordance with current practices.

5. The parties, including the Counties, the District of Columbia, the WSSC, the State Water Control Board of Virginia and the State of Maryland, shall take all steps necessary to expedite review and processing (issuance or denial) of permit applications of the parties, their agents or contractors, required for the implementation of the sludge management measures required by the foregoing paragraphs. In the event the processing of a permit for any of the said sites is delayed, the regulatory agency responsible for the delay shall, at the request of any party to these proceedings, show cause to this court why such permit shold not be expeditiously processed. No user jurisdiction shall be excused from the responsibility for disposing or composting of its share of the digested and undigested sludges from the Blue Plains Plant because of denial of a permit for a proposed facility.

6. No user jurisdiction shall take any action which is not related to the protection of the public's health to prevent the disposal or composting of sludges from the Blue Plains Plant under this order.

7. The Calverton Citizens Association has filed submissions with the Court concerning Montgomery County's Site 2 on Route 29. The Court has reviewed this information, as well as the submissions of Montgomery County.

As required by this order, Montgomery County, through the WSSC, must take the measures necessary to assure that the public health, safety and welfare will be protected in the implementation of Site 2. All the parties shall similarly take steps to protect the public's health in implementing this order.

8. Each user jurisdiction shall immediately notify all parties in writing of any circumstances or conditions which come to its attention that may cause or may in any way lead to a failure by it or another party hereto to meet the requirements of this order.

9. It is understood that several parties to the adjudicatory hearing on the Blue Plains Plant NPDES Permit are seeking to appeal to the Administrator of the Environmental Protection Agency the decision of the Regional Administrator not to require denitrification at the plant in that permit. (In re NPDES permit No. D.C. 00021199, Docket No. DC-AH-001, Appeal No. 78-4). If the Administrator decides to require installation of denitrification units at the Blue Plains Plant, the District of Columbia shall advise this Court as to whether such action necessitates the relocation of the composting facility required to be constructed by paragraph 1d of this order. Should the Court find that such action is necessary, said composting facility shall be relocated to a site specified by the Court.

Dated: July 10, 1978

/s/

Unitd States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE WATER CONTROL BOARD;
COMMONWEALTH OF VIRGINIA;
FAIRFAX COUNTY, VIRGINIA;
and DISTRICT OF COLUMBIA,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Intervenor-Plaintiff,

v.

WASHINGTON SUBURBAN SANITARY COMMISSION, et al.,

Defendants.

and

MONTGOMERY COUNTY and PRINCE GEORGE'S COUNTY, MARYLAND
Intervenor-Defendants.

UNITED STATES OF AMERICA,

Plaintiff,

v.

DISTRICT OF COLUMBIA, et al.,

Defendants.

Civil Action No. 1813-73

Civil Action No. 77-1929

FILED
MAY 18 1978
JAMES E. DAVEY, Clerk

ORDER

Upon motion of the United States and after a hearing thereon, it is hereby ordered that the District of Columbia, Washington Suburban Sanitary Commission, Montgomery County, Prince George's County, and Fairfax County shall take the following actions to accomplish composting or disposal or sewage sludge from the Blue Plains Treatment Plant after September 21, 1978:

(1) That each of the above-named parties shall evaluate potential sites for composting or disposal of digested and undigested sludge from the Blue Plains Treatment Plant within each respective party's boundaries. Each party shall evaluate sites with capacity sufficient to compost or dispose of sludge for a least one year and shall prepare a report on the feasibility of composting or disposing of sludge at each of the sites evaluated by June 5, 1978. Sites of less than one year disposal capacity should also be evaluated if they can be prepared for use by September 21, 1978, and other larger sites cannot be prepared by that date.

(2) Each of the aforesaid parties, excluding the Washington Suburban Sanitary Commission, shall designate in writing to the Court by June 5, 1978 a site or sites within its boundaries for composting or disposal of its proportionate share of digested and undigested sludge from the Blue Plains Treatment Plant for a period of at least one year beginning on September 21, 1978.

(3) Each party shall take all steps necessary for composting or disposal of its proportionate share of sludge from the Blue Plains Treatment Plant at the designated site in a safe, environmentally acceptable manner by September 21 1978, and shall begin composting or disposing of its share of sludge on that date.

It is further ordered that each party shall submit to the Court and to all other parties on June 5, 1978 at a status call at 10:30 A.M. its site feasibility report for sludge disposal in that jurisdiction and its designation of a site or sites for composting or disposal of sludge after September 21, 1978.

Dated: May 18, 1978

/s/_____ _____
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE WATER CONTROL BOARD; COMMONWEALTH OF VIRGINIA; FAIRFAX COUNTY, VIRGINIA; and DISTRICT OF COLUMBIA,	)	
Plaintiffs,	)	
and	)	
UNITED STATES OF AMERICA,	)	
Intervenor-Plaintiff,	)	
v.	)	Civil Action No. 1813-73
WASHINGTON SUBURBAN SANITARY COMMISSION,	)	
Defendant	)	
and	)	FILED JULY 30, 1974
MONTGOMERY COUNTY and PRINCE GEORGE'S COUNTY, MARYLAND Intervenor-Defendants.	)	JAMES E. DAVEY, Clerk

DECREE

The Complaint having been filed herein on September 24, 1973 and with Plaintiffs, Intervenor-Plaintiff, Defendant and Intervenor-Defendants by their respective attorneys having consented without trial or adjudication of any issue of fact or law herein to the entry of this Decree, and without this Decree constituting any evidence or ad-

mission by any party hereto with respect to any issue of fact or law herein:

NOW, THEREFORE, Before the taking of any testimony, upon the pleadings, and without adjudication of any issue of fact or law herein, and upon consent of the parties hereto, to is Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto.

The provisions of this Decree shall apply to and be binding upon the parties hereto, their agents, servants, successors, and all persons, firms and corporations acting under, through or for them and upon those persons, firms and corporations in active concert or participation with them.

III

The parties hereto incorporate their Agreement of June 13, 1974, (attached hereto as Exhibit A) into this Decree and agree to comply fully with their obligations stated thereunder. The above-named Agreement is fully enforceable hereunder and may only be revised by order of the Court. Any revision of said Agreement is null and void until approved by order of the Court. Implementation of the provisions of paragraph 8(c) of the Agreement attached hereto and incorporated herein shall not constitute a revision for which the approval of the Court is required hereunder.

IV

The Decree is not and shall not be interpreted to be a permit for the discharge of pollutants pursuant to Section

402 of the Federal Water Pollution Control Act, 33 U.S.C. sec. 1342, or any other federal law, nor shall it in any way affect any obligation of the parties hereto to secure such a permit.

V

This Decree shall in no way relieve the parties hereto of their obligations to comply with any local, state, or federal law.

VI

This Court shall have the power to amend this Decree only upon application by one or more of the parties hereto, upon proper notification and hearing as required by the rules of the Court.

VII

This Court shall retain jurisdiction in order to enforce the provisions of this Decree and to order any appropriate relief for violation thereof.

July 29, 1974

/s/_____
United States District Judge

We hereby consent to the entry of the foregoing Decree without further notice.

STATE WATER CONTROL BOARD
COMMONWEALTH OF VIRGINIA,
Plaintiff,

ANDREW P. MILLER
Attorney General of Virginia

GERALD L. BALILES
Deputy Attorney General

By:/s/_____
JAMES E. RYAN, JR.
Assistant Attorney General

FAIRFAX COUNTY, VIRGINIA
Plaintiff,

By:/s/_____
FREDERICK LEE RUCK
County Attorney

JOHN F. RICK
Assistant County Attorney

DISTRICT OF COLUMBIA,
Plaintiff,

C. FRANCIS MURPHY
Corporation Counsel
District of Columbia

IVERSON O. MITCHELL III
Assistant Corporation Counsel

By: /s/_____
JOHN C. SALYER
Assistant Corporation Counsel

UNITED STATES OF AMERICA,
Intervenor-Plaintiff,

By: /s/_____
WALLACE H. JOHNSON
Assistant Attorney General
Land and Natural Resources
Division

WALTER KIECHEL, JR
Deputy Assistant Attorney General

MARTIN GREEN
Chief, Pollution Control Section

JOHN E. VARNUM
Attorney, Land and Natural
Resources Division
Department of Justice

WASHINGTON SUBURBAN SANITARY
COMMISSION,
Defendant,

JOHN B. KENKEL
General Counsel

J. EUGENE CLEARY
Assistant General Counsel

By: /s/_____
CURTIS E. VON KANN
HOGAN AND HARTSON
Attorneys for Washington Suburban
Sanitary Commission

MONTGOMERY COUNTY, MARYLAND,
Intervenor-Defendant,

By: /s/_____
Richard S. McKernon
County Attorney

STEPHEN P. JOHNSON
Assistant County Attorney

JOHN B. WALSH, JR.
Assistant County Attorney

APPENDIX A

BLUE PLAINS SEWAGE TREATMENT PLANT AGREEMENT

(Appendices Omitted)

June, 1974

BLUE PLAINS SEWAGE TREATMENT PLANT AGREEMENT

Recognizing that further measures are required to ensure that the Blue Plains sewage treatment plant will function adequately until the current expansion of the sewage treatment facilities there is completed, the parties hereto enter into the following agreement which shall be incorporated into the consent decree to be submitted to the Court in the suit captioned *State Water Control Board, et al. v. Washington Suburban Sanitary Commission, et al.*, Civil Action No. 1813-73, which is currently pending in the District Court for the District of Columbia.

The parties hereto agree that the terms of this Agreement supplement but, except as provided below, shall not alter the terms and conditions of the 1970 Memorandum of Understanding or the 1971 Interim Treatment Program Agreement.

1. **Definitions**

   (a) Flow - For the purpose of this Agreement, "flow" means the average flow for any twelve consecutive months, hereinafter referred to as the rolling annual average flow.

   (b) Where the term "100,000 pounds per day of BOD_5"is used herein and in the agreement of October 18, 1971, it means the total discharge of

BOD_5 as measured on a monthly average basis from the Blue Plains Treatment Plant including any discharge from the Bolling Field overflow.

(c) For the purposes of this Agreement "interim chemical addition program" means the chemical addition program, as defined in the 1971 Interim Treatment Program Agreement, at the Blue Plains Plant during the "interim period." The implementation of this program shall enable the Plant to reduce the pollutant load to the River to a maximum of BOD_5 100,000 pounds per day or less, as required at any time by the discharge permit issued pursuant to § 402 of the Federal Water Pollution Control Act.

(d) Interim Period -The "interim period" means that period of time beginning with the date of execution of this Agreement and ending with the date on which the advanced waste treatment facilities at Blue Plains are fully operational or the date on which permanent sludge handling facilities at Blue Plains are fully operational, or December 31, 1977, whichever date occurs first.

2. Allotted Flows

The parties hereto agree as follows:

(a) For the period until the expanded secondary treatment process with full plant chemical addition is placed into operation at the Blue Plains Plant, the allocation of flows shall be based upon the following premises:

(1) The allocation of flows to each user jurisdiction, as established in the 1971 Interim Chemical Agreement, is expressly conditioned upon the successful implementation of the in-

terim chemical addition program, which necessarily includes the satisfactory marketing and/or disposal of sludge which is produced by that program. It is anticipated that this program. It is anticipated that this program will initially generate approximately 400 tons per day of chemical sludge.

(2) If the interim chemical addition program is successfully implemented, a total flow of 299 MGD shall be permitted to the Blue Plains Plant. See Appendix A which is attached hereto and incorporated herein.

(3) The allocation of that 299 MGD flow among the user jurisdictions for any month shall be that allocation set forth in Table 1 of Appendix A.

(b) After the expanded secondary treatment process with full plant chemical addition is placed into operation, a total flow of 309 MGD shall be permitted to the Blue Plains Plant. The allocation of that 309 MGD among the user jurisdictions shall be that allocation set forth in Table 2 of Appendix A.

(c) (1) Prince George's and Montgomery Counties agree to work out the allocation of flows available to each through the Washington Suburban Sanitary District to the Blue Plains Sewage Treatment Plant at 309 MGD. The allocation between Prince George's and Montgomery Counties shall cover the period between the completion of the Anacostia Force Main and the completion and commencement of operation of the advanced wastewater treatment plant at Dickerson, Maryland. In the

event that the counties fail to reach such an agreement by diligent negotiation and analysis of the future needs of both counties within 45 days from the date of this Agreement, officials of these two counties agree to have the Governor of the State of Maryland decide the issue and they also agree to accept his decision when so made. In the event the Governor is called upon to make such a decision, he will give due consideration to the unmet development needs in the Prince George's portion of th Anacosti Basin.

(2) Following the completion and commencement of operation of the Dickerson Plant, the flow share between Prince George's and Montgomery Counties to the Blue Plains Treatment Plant shall be on a equal basis. Numerically, this sharing will allocate 76.6fi MGD of the 309 MGD Blue Plains capacity to each of the said counties

(d) The storm water portion of the combined flows from the District of Columbia which are pumped to Blue Plains for treatment, (approximately 90% receiving secondary treatment) shall deducted from the total District of Columbia flow, and shall not count in computation of the allotted flow of the District of Columbia. The storm water portion of these combined flows shall be calculated as shown on Appendix B, which is attached hereto and incororated herein. When the 309 MGD advanced waste treatment process is completed at Blue Plains, there will be capacity to provide primary treatment and disinfection for an additional 289 MGD of combined flow over and above the

combined flow referred to above. The District of Columbia agrees to vigorously pursue a program for the collection and treatment of all combined flows.

3. **Control of Sewage Flows**

All parties hereto agree that the following conditions shall be met:

(a) For each user jurisdiction, except the Washington Suburban Sanitary Commission, the sum of its "actual" flows plus all its "committed" flows *shall at no time exceed* its allotted flows as set forth in Appendix A. See Sample Calculation #1 in Appendix C, which is attached hereto and incorporated herein.

For the purposes of computations made pursuant to paragraph 3(a), "actual flows" means the highest rolling annual average flow recorded for any month during the twelve consecutive months ending with the month for which the computation is made.

For purposes of computations made pursuant to paragraph 3(a) "committed flows" means those flows which have received all required approvals to enter the sewerage system.

(b) Recognizing that it has present sewer service commitments outstanding under existing regulatory orders and procedures, the Washington Suburban Sanitary Commission agrees to comply with all the following requirements:

(1) The Commission shall defer, as necessary, the connections of the present outstanding

commitments made to its sewerage system such that the requirements set forth in subparagraphs 3.(b)(2), 3.(b)(3) and 3.(b)(4) below are met at all times.

(2) During the period from the date of this Agreement until January 1, 1975, the Commission shall control the flows within, and the connections to, its sewerage system such that, for each month, the "actual" flows within its sewerage system (i.e., defined for this time period to mean the rolling annual average flow for the month for which the computation is made) *shall not exceed* the Commission's allotment for that month as set forth in Table 1 of Appendix A. (See Sample Calculation #2 in Appendix C.)

(3) During the period from January 1, 1975, until such time as the expanded secondary treatment process with full plant chemical addition is placed into operation at the Blue Plains Plant, the Commission shall control the flows within, and the connections to, its sewerage system such that, for each month, the "actual" flows within its sewerage system (*i.e.*, defined for this time period to mean the highest rolling annual average flow recorded for any month within the twelve consecutive months which immediately precede the month for which the computation is made) *plus* the flows attributable to the connections made during the month for which the computation is made *shall not exceed* 144 MGD. (See Sample Calculation #3 in Appendix C.)

(4) After such time as the expanded secondary treatment process with full plant chemical ad-

dition is placed into operation at the Blue Plains Plant, the Commission shall control the sewer service commitments it makes, the flows within, and the connections to, its sewerage system such that, for each month, the "actual" flows within its sewerage system (*i.e.*, defined for this time period to mean the highest rolling annual average flow recorded for any month within the twelve consecutive months ending with the month for which the computation is made) *plus* the total flows attributable to all outstanding commitments to provide sewerage service where such flows will be treated at the Blue Plains Plant *shall not exceed* 153.294 MGD. (See Sample Calculation #4 in Appendix C.)

(c) If, for any reason, any user jurisdiction violates any condition or any requirement set forth above which is applicable to it, that user jurisdiction shall immediately stop making any further hook-ups, connections and extensions to its sewerage system. The sole exceptions to this ban shall be:

i. Elimination of an alternative method of sewage disposal which is certified to be a public health hazard by the chief officer of the State health agency or his designated local representative this certification shall only be made on a parcel by parcel basis.

ii. Public service buildings, which includes schools, hospitals, nursing homes, medical and dental clinics, churches and synagogues, and structures used by public agencies in pro-

viding essential services for public health and welfare.

iii. Those buildings which have received sewer service commitments, and for which the footings had been poured and finally inspected as of the date that the ban on further hook-ups is imposed.

Such user jurisdiction agrees to make no further hook-ups, connections or extensions until three consecutive months have passed during which that user jurisdiction has complied, for each of those months, with all conditions and requirements set forth above applicable to it.

Flow Reporting

Each user jurisdiction agrees to submit to the District of Columbia each month a report which sets forth that user jurisdiction's actual flows, committed flows and total flows attributable to all actual connections made during that month. Such report shall contain a break down of total committed flows by sewer sheds and by calendar year during which such flows are expected to be connected to the system. Such report shall further set forth the total flows attributable to any connections and hookups made pursuant to the exceptions contained in 3.c. above. The District of Columbia shall consolidate each month the reports of all new jurisdictions and furnish copies of such consolidated report to each party hereto.

5. Flow Measuring and Monitoring

A committee will be established by E.P.A., the

District, WSCC, Fairfax County, and other user jurisdictions, to develop a metering program which shall include, but not be limited to, maintenance, calibration, monitoring, replacement, location of additional meters, and reporting. The District of Columbia shall be the responsible party to install, replace, calibrate, record, and otherwise maintain all flow meters (35 at present) presently used to compute flows tributary to Blue Plains and those additional meters which may be installed for this purpose. Each user jurisdiction shall bear the actual cost, as billed by the District of Columbia, for the above services actually received by that user jurisdiction.

6 . **Reduction of Flows**

The parties hereto agree to take action necessary to reduce and control flows in the collector and interceptor systems tributary to Blue Plains. Such action shall include, but not be limited to, the following:

(a) Infiltration and Inflow Abatement - All user jurisdictions signatory hereto agree to expedite studies and to take all necessary corrective action as soon as possible to reduce infiltration and inflows into the system to within acceptable limits.

(b) Water Conservation Methods - All user jurisdictions signatory hereto agree, subject to existence of requisite legal authority, to adopt water conservation procedures in their respective jurisdictions similar in objective to those

recommended by the Metropolitan Washington Council of Governments.

7. Correction of Raw Sewage Overflows

(a) The District and WSCC agree to the following schedule to stop all overflows in the Cabin John Basin. The existing valve on the relief sewer to the Maryland Potomac Interceptor has been fully opened and this flow is being metered by WSSC. A permanent connection (the size of which is to be determined within one month after the date of this Agreement by the District and WSCC) to the Potomac Interceptor (Dulles Interceptor) will be permitted by the District so long as it is metered and does not affect the flow allocation of other Potomac Interceptor users and flow through that connection shall be counted as part of the total WSSC allocatino to Blue Plains. The permanent connection will be completed within 300 days after the necessary permits have been granted by the National Park Service.

(b) To relieve overflows of raw sewage into the Anacostia River, the WSSC and District of Columbia agree to expedite the construction of a sewer interceptor from Bladensburgh to Blue Plains. The initial segments of such interceptor shall be constructed within fifteen months following the completion of all necessary administrative actions, with a temporary connection to an existing District of Columbia sewer at the Penn Central railroad crossing as stated in the Interim Chemical Agreement of October 18, 1971. EPA and the other parties to this Agreement agree to coordinate and cooperate, within

their respective statutory powers, toward resolution of all applicable administrative actions required to expedite the construction of this interceptor. Such administrative actions include but are not limited to, obtaining necessary rights-of-way, obtaining all necessary permits, and arrangement of the necessary financing.

(c) To mitigate the overflows at Bolling Field, the District agrees to maintain a sewage screen at the outlet of this overflow. Further reduction of wet weather overflows at this location will result when the new primary sedimentation tanks are placed in operation at Blue Plains.

8. Sludge Management

The parties hereto recognize that the successful operation of the Blue Plains Plant necessitates the management and distribution of sludges, both digested and undigested, from the wastewater treatment process. The parties further recognize that during the past year Prince George's County has received most of the digested sludge from the Blue Plais Plant (184,000 tons). Additionally, Fairfax County has received the majority of the refuse (260,000 tons) from the District of Columbia. The parties also agree that the interim chemical addition program cannot be successfully implemented unless adequate sludge management capability is secured. In the spirit of regional cooperation, the parties hereto agree to manage and accept both the digested and undigested sludges in the following manner:

(a) **Digested Sludge**

(1) Digested sludge is produced at a rate of up to 310 tons per day (approximately 20% solids by weight). Digested sludge has agricultural value as a soil conditioner and fertilizer, and will be managed by such methods as land spreading and burial to the extent tht the sludge cannot be made available for beneficial reuse through composting, thermal dehydration, or other acceptable methods. Within 10 days of the execution of this Agreement, Montgomery, Prince George's, and Fairfax Counties (the latter representing all Virginia flows during the interim period) agree to designate sites for the receipt of digested sludge on a proportionate basis in accordance with allocated flows to the Blue Plains Plant at the 309 MGD level, except as provided in paragraph 8(b)(4), which provides for an additional quantity of digested sludge to be allocated to Fairfax County.

(2) Except as provided in paragraph 8(b)(4), each of the above-mentioned Counties is required to receive its proportionate share of all digested sludge, by flows, and a proportionate share of the District of Columbia's proportionate share of the digested sludge, by flows, during the interim period. The receipt of the District of Columbia's proportionate share of the digested sludge by the

suburban jurisdictions recognizes that the District of Columbia has exhausted all sites for land containment within its boundaries. It is intended that the distribution of digested sludge be rotated at least every 90 days, in the most efficient manner available to the District of Columbia. For accounting purposes, all sludge distributed to a county shall be credited to its proportionate share. The District of Columbia shall render quarterly reports to all parties on the distribution of digested sludge pursuant to this paragraph.

(b) **Undigested Sludge**

(1) Undigested sludge will be produced initially at a rate of approximately 400 tons per day (approximately 20% solids by weight) resulting from the addition of chemicals to the wastewater.

(2) Recognizing that the prime responsibility for the operation of the Blue Plains Plant rests with the District of Columbia, the State of Maryland, operating through the Maryland Environmental Service (MES), agrees to assist the District by providing for management and disposal of all undigested solids resulting directly from the interim chemical treatment of sewage at the Blue Plains Plant. The proposed method of undigested sludge management and disposal will include one or more of such methods as: thermal

dehydration; composting; and land containment. The MES has programmed thermal dehydration facilities at Blue Plains with a nominal initial capacity of 240 tons per day of undigested sludge. Expansion of that system, as well as composting of undigested sludge, will depend upon testing currently underway by the U.S. Department of Agriculture, MES, and the District of Columbia, and upon testing of the thermal dehydration units at Blue Plains. A site or combination of sites for land containment is needed as a backup form of undigested sludge management, in case the thermal dehydration, composting or other alternative operations are not sucessful.

(3) The MES, in cooperation with Montgomery County and Prince George's County, will conduct the appropriate studies to select the necessary sites, and the transport routes thereto. The MES will prepare and release the final site selection report within a period of 50 days after the date of this Agreement. Montgomery County and Prince George's County each agree to select and approve a site or combination of sites, including the transportation routes thereto, within 50 days after the release of the MES report. The MES agrees to acquire the rights necessary to use said sites and to place into opera-

tion on said sites undigested sludge disposal and/or handling facilities within 50 days after said sites have been selected and approved.

(4) Begining 150 days after the date of this Agreement, and to the extent that thermal dehydration and/or composting have not been successful in disposing of all of the undigested sludge, Montgomery County, Prince George County, and Fairfax County will each receive its proportionate share of all undigested sludge, by flow allocation, and a proportionate share of the District of Columbia's sludge, by flow allocation, during the interim period, except that Fairfax County will receive its proportionate share of undigested sludge in the form of digested sludge. The Fairfax County share of undigested sludge will be accepted by Montgomery and Prince Georges Counties proportionally, by flow allocation, in adition to their own shares as defined above. In return, Fairfax County will accept, in addition to the amount of digested sludge specified as its share in Section 8(a)(2), an amount of digested sludge equal in quantity to the Fairfax County share of undigested sludge, as defined in this paragraph; this additional quantity of digested sludge will be subtracted from the proportional shares of Mon-

tgomery and Prince Georges Counties, as defined in paragraph 8(a)(2) on a proportional basis, by flow allocation. Accordingly, all of the undigested sludges shall be received and disposed of in Montgomery and Prince Georges Counties; and the amounts of digested sludges to be received by Montgomery and Prince Georges Counties in accordance with the terms of paragraph 8(a)(2) will be reduced proportionally by the receipt of additional digested sludges by Fairfax County. See Appendix D attached hereto and incorporated herein. In the event that the thermal dehydration or composting operations are successful and the resultant products are unmarketable, those products shall be distributed on the same basis. Operational decisions to achieve the proportionate sharing of undigested sludge will rest with the MES, which shall make quarterly reports thereon to each party hereto.

(5) All costs of sludge handling and disposal, and all costs attributable to the interim chemical program, including costs for acquisition of property rights necessitated pursuant to this Agreement, shall be borne by the user jurisdictions on the ratio of their respective monthly flows to the total of the monthly flows to the Plant. The District of Columbia shall be responsible for the collection and disbursement

of all money required to implement the provisions of this paragraph.

(6) The user jurisdictions signatory hereto recognize the need to resolve the matter of recovery of costs and values of property acquired for sludge disposal, and, accordingly, agree to enter negotiations and to resolve this issue by July 1, 1976.

(c) The District of Columbia, MES, and their agents and all persons, firms or corporations acting under, through or for them, by contract or otherwise, shall deliver and apply all undigested and digested sludge in accordance with formal procedures established by the respective receiving jurisdictions; provided, however, that such procedures shall not alter the distribution of sludges among the respective jurisdictions as set forth herein.

(d) The parties hereto recognize that a regional agreement in required prior to the commencement of operation of the advance wastewater treatment processes at the Blue Plains Plant in order to dispose adequately of the digested and undigested sludge which will be generated from the additional treatment processes at the Plant. It is anticipated that the installation and operation of all AWT treatment at the Blue Plains Plant will generate approximately 2,400 tons per day of sludge. The parties will agree, on or before July 1, 1976, on a permanent metropolitan-wide equitable disposal plan which will require the parties hereto to ac-

cept sludge, whether digested, undigested, or both, on a fair share basis to be affective as soon as possible after said Agreement is achieved, but no later than December 31, 1977.

(e) In the event that there is any dispute as to the distribution of raw and/or digested sludges, or unmarketable products produced therefrom, among Montgomery, Prince George's and Fairfax Counties during the interim period, the algebraic expressions set forth in Appendix D shall control such distribution.

9. **Conference Procedure**

Technical representatives of all parties shall meet in the first week of January, April, July and October of each year to review the watewater treatment programs within the Washington Metropolitan Area. The october meeting will include the principals of the parties hereto. The quarterly meetings shall be arranged by the Executive Director of the Metropolitan Washington Council of Governments. By written notice of at least 5 days, any of the parties hereto may call a special meeting if it feels conditions warrant immediate action. The user jurisdictions signatory hereto agree to meet, as provided above, before any future litigation concerning the subject matter of this Agreement is commenced by any user jurisdiction signatory hereto against any other party hereto. No meeting shall be required as a condition precedent to litigation if such a meeting cannot be held within 30 calendar days

of the date on which the request for the meeting was made to all parties hereto.

10. As a signatory party to this Agreement, the Environmental Protection Agency in no respect waives its authority or obligations under the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*, including its authority under Subsection 402(h) of that Act, or any other applicable Federal statute. This Agreement shall not affect nor alter the terms of any National. Pollutant Discharge Elimination System Permit which may be issued for the discharge or discharge which are the subjects of this Agreement.

This Agreement shall become effective on June 13, 1974.

WITNESS the following signatures of the parties by their duly-authorized agents.

DISTRICT OF COLUMBIA

By: /s/ Illegible — Date: June 13, 1974
Illegible — June 13, 1974

WASHINGTON SUBURBAN SANITARY COMMISSION

By: /s/ Illegible — Date: June 10, 1974
Illegible — June 13, 1974

MONTGOMERY COUNTY, MARYLAND

By: /s/ Illegible — Date: June 13, 1974
Illegible — June 14, 1974

PRINCE GEORGE'S COUNTY, MARYLAND

By: /s/ Illegible — Date: June 14, 1974
Illegible — June 17, 1974

STATE OF MARYLAND

By: /s/ Illegible — Date: June 13, 1974

MARYLAND ENVIRONMENTAL SERVICES

By: /s/ Illegible — Date: June 13, 1974

FAIRFAX COUNTY, VIRGINIA

By: /s/ Illegible — Date: June 13, 1974
Illegible — June 13, 1974

STATE WATER CONTROL BOARD,
COMMONWEALTH OF VIRGINIA

By: /s/ Illegible — Date: June 13, 1974

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Illegible — Date: June 13, 1974
Illegible — June 13, 1974

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES

Constitutional Provisions

AMENDMENT X

The powers not delegated to the United States by th Constitution, nor prohibited by it to the States, are reserv ed to the States respectively, or to the people.

Statutes

28 U.S.C. §2283. Stay of State Court Proceedings

A court of the United States may not grant an injun tion to stay proceedings in a State court except as express authorized by Act of Congress, or where necessary in a of its jurisdiction, or to protect or effectuate its jud ments. (June 25, 1948. c. 646, §1, 62 Stat. 968)

33 U.S.C. §1251. Congressional declaration of goals a policy

(a) The objective of this Act is to restore and maintain t chemical, physical, and biological integrity of the Natio

waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act –

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigate waters, waters of the contiguous zone, and the oceans.

(b) It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and

to consult with the Administrator in the exercise of his authority under this Act. It is the policy of Congress that the States manage the construction grant program under this Act and implement the permit programs under sections 402 and 404 of this Act [33 USC §§ 1342, 1344]. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Except as otherwise expressly provided in this Act, the Administrator of the Environmental Protection Agency (hereinafter in this Act called "Administrator") shall administer this Act.

(e) Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such process.

(f) It is the national policy that to the maximum extent possible the procedures utilized for implementing this Act shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. It is the further policy of Congress that nothing in this Act shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

(June 30, 1948, ch 758, Title I, § 101, as added, Oct. 18, 1972, P.L. 92-500, § 2, 86 Stat. 816; Dec. 27, 1977, P.L. 95-217, §§ 5(a), 26(b), 91 Stat. 1567.)

33 USC § 1252. Comprehensive programs for water pollution control

(a) Preparation and development. The Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements

which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withrawal of such waters for public water supply, agricultural, industrial, and other purposes. For the purpose of this section, the Administrator is authorized to make joint investigations with any such agencies of the condition of any waters in any State or States, and of the discharges of any sewage, industrial wastes, or substance which may adversely affect such waters.

(b) Planning for reservoirs; storage for regulation of streamflow. (1) In the survey or planning of any reservoir by the Corps of Engineeers, Bureau of Reclamation, or other Federal agency, consideration shall be given to inclusion of storage for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

(2) The need for and the value of storage for regulation of streamflow (other than for water quality) including but not limited to navigation, salt water intrusion, recreation, aesthetics, and fish and wildlife, shall be determined by the Corps of Engineers, Bureau of Reclamation, or other Federal agencies.

(3) The need for, the value of, and the impact of, storage for water quality control shall be determined by the Administrator, and his views on these matters shall be set forth in any report or presentation to Congress proposing authorization or construction of any reservoir including such storage.

(4) The value of such storage shall be taken into account in determinilng the economic value of the entire

project of which it is a part, and costs shall be allocasted to the purpose of regulation of streamflow in a manner which will insure that all project purposes, share equitably in the benefits of multiple-purpose construction.

(5) Costs of regulation of streamflow features incorporated in any Federal reservoir or other impoundment under the provisions of this Act shall be determined and the beneficiaries identified and if the benefits are widespread or national in scope, the costs of such features shall be nonreimbursable.

(6) No license granted by the Federal Power Commission [Federal Energy Regulatory Commission] for a hydroelectric power project shall include storage for regulation of streamflow for the purpose of water quality control unless the Administrator shall recommend its inclusion and such reservoir storage capacity shall not exceed such proportion of the total storage required for the water quality control plan as the drainage area of such reservoir bears to the drainage area of the river basin or basins involved in such water quality control plan.

(c) **Basins; grants to State agencies.** (1) The Administrator shall, at the request of the Governor of a State, or a majority of the Governors when more than one State is involved, make a grant to pay not to exceed 50 per centum of the administrative expenses of a planning agency for a period not to exceed three years, which period shall begin after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 18, 1972], if such agency provides for adequate representation of appropriate State, interstate, local, or (when appropriate) international interests in the basin or portion thereof involved and is capable of developing an effective, comprehensive

water quality control plant for a basin or portion thereof.

(2) Each planning agency receiving a grant under this subsection shall develop a comprehensive pollution control plan for the basin or portion thereof which –

(A) is consistent with any applicable water quality standards, effluent and other limitations, and thermal discharge regulations established pursuant to current law within the basin;

(B) recommends such treatment works as will provide the most effective and economical means of collection, storage, treatment, and elimination of pollutants and recommends means to encourage both municipal and industrial use of such works;

(C) recommends maintenance and improvement of water quality within the basin or portion thereof and recommends methods of adequately financing those facilities as may be necessary to implement the plan; and

(D) as appropriate, is developed in cooperation with, and is consistent with any comprehensive plan prepared by the Water Resources Council, and areawide waste management plans developed pursuant to section 208 of this Act [33 USCS § 1288], and any State plan developed pursuant to section 303(e) of this Act [33 USCS § 1313e].

(3) For the purposes of this subsection the term "basin" includes, but is not limited to, rivers and their tributaries, streams, coastal waters, sounds, estuaries, bays, lakes, and portions thereof, as well as the lands drained thereby.

(d) Report to Congress. The Administrator, after consultation with the States, and River Basin Commissions

established under the Water Resources Planning Act, shall submit a report to Congress on or before July 1, 1978, which analyzes the relationship between programs under this Act, and the programs by which State and Federal agencies allocate quantities of water. Such a report shall include recommendations concerning the policy in section 101(g) of the Act [33 USCS § 1251(g)] to improve coordination of efforts to reduce and eliminate pollution in concert with programs for managing water resources. TE(June 30, 1948, ch. 758, Title I, § 102, as added Oct. 18, 1972, P.L. 92-500, § 2, 86 Stat. 817; Dec. 27, 1977, P.L. 95-217, § 5(b), 91 Stat. 1567.)

33 USC § 1311. Effluent limitations

(a) Illegality of pollutant discharges except in compliance with law. Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 USCS § 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objections. In order to carry out the objective of this Act there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of this Act [33 USCS § 1314(b)], or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 307 of this Act [33 USCS § 1317]; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 203 of this Act [33 USCS § 1283] prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 304(d)(1) of this Act [33 USCS § 1314(d)(1)]; or

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 510 [33 USCS § 1370]) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this Act.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best availabble technology economically achievable for such category or classs, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act [33 USCS § 1314(b)(2)], which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 315 [33 USCS § 1325]), that such elimination is technologically and economically

achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act [33 USCS § 1314(b)(2)], or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this praagraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 307 of this Act [33 USCS § 1317];

(B) not later than July 1, 1983, compliance by all publicly owned treatment works with the requirements set forth in section 201(g)(2)(A) of this Act [33 USCS § 1281(g)(2)(A)]:

(C) not later than July 1, 1984, with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 307 of this Act [33 USCS § 1317(a)] which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (a) of this paragraph not later than three years after the date such limitations are established;

(E) not later than July 1, 1984, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a)(4) of this Act [33 USCS § 1314(a)(4)] shall require application of the best conventional pollutant control technology as determined in accordance with regulations

issued by the Administrator pursuant to section 304(b)(4) of this Act [33 USCS § 1314(b)(4)]; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than 3 years after the date such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(c) Modification of timetable. The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations. Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations. Effluent limitations established pursuant to this section or section 302 of this Act [33 USCS § 1312] shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this Act.

(f) Illegality of discharge of radiological, chemical, or biological warfare agents or high-level radioactive waste. Notwithstanding any other provisions of this Act it shall be unlawful to discharge any radiological, chemical, or

biological warfare agent or high-level radioactive waste into the navigable waters.

(g) Waiver for certain pollutants. (1) The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 304(a)(4) of this Act [33 USCS § 1314(a)(4)], toxic pollutants subject to section 307(a) of this Act [33 USCS § 1317(a)], and the thermal component of discharges) from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that—

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(2) If an owner or operator of a point source applies for

a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modifiction under this subsection.

(h) Modification of secondary treatment requirements. The Administrator, with the concurrence of the State, may issue a permit under section 402 [33 USCS § 1342] which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant in an existing discharge from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that –

(1) there is an applicable water quality standard specific to the pollutant for which the modification is rquested, which has been identified under section 304(a)(6) of this act [33 USCS § 1314(a)(6)];

(2) such modifed requirements will not interfere with the attaiment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(8) any funds available to the owner of such treatment works under title II of this Act [33 USCS § 1281 et seq.] will be used to achieve the degree of effluent reduction required by section 201(b) and (g)(2)(A) [33 USCS § 1281(b), (g)(2)(A)] or to carry out the requirements of this subsection.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act [33 USCS § 1251(a)(2)].

(i) Municipal time extensions. (1) Where construction is required in order for a planned or existing publicly owned treatment works to achieve limitations under subsection (b)(1)(B) or (b)(1)(C) of this section, but (A) construction cannot be completed within the time required in such subsection, or (B) the United States has failed to make financial assistance under this Act available in time to achieve such limitations by the time specified in such subsection, the owner or operator of such treatment works may request the Administrator (or if ap-

propriate the State) to issue a permit pursuant to section 402 of this Act [33 USCS § 1342] or to modify a permit issued pursuant to that section to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after the date of enactment of this subsection [enacted Dec. 27, 1977]. The Administrator (or if appropriate the State) may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the publicly owned treatment works based on the earliest date by which such financial assistance will be available from the United States and construction can be completed, but in no event later than July 1, 1983, and shall contain such other terms and conditions, including those necessary to carry out subsections (b) through (g) of section 201 of this Act [33 USCS § 1281(b)–(g)], section 307 of this Act [33 USCS § 1317], and such interim effluent limitations applicable to that treatment works as the Administrator determines are necessary to carry out the provisions of this Act.

(2)(A) Where a point source (other than a publicly owned treatment works) will not achieve the requirements of subsections (b)(1)(A) and (b)(1)(C) of this section and–

(i) if a permit issued prior to July 1, 1977, to such point source is based upon a discharge into a publicly owned treatment works; or

(ii) if such point source (other than a publicly owned treatment works) had before July 1, 1977, a contract (enforceable against such point source) to discharge into a publicly owned treatment works; or

(iii) if either an application made before July 1, 1977, for a construction grant under this Act for a publicly owned treatment works, or engineering or

architectural plans or working drawings made before July 1, 1977, for a publicly owned treatment works, show that such point source was to discharge into such publicly owned treatment works, and such publicly owned treatment works in presently unable to accept such discharge without construction, and in the case of a discharge to an existing publicly owned treatment works, such treatment works has an extension pursuant to paragraph (1) of this subsection, the owner or operator of such point source may request the Administrator (or if appropriate the State) to issue or modify such a permit pursuant to such section 402 [33 USCS § 1342] to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after the date of enactment of this subsection [enacted Dec. 27, 1977] or the filing of a request by the appropriate publicly owned treatment works under paragraph (1) of this subsection, whichever is later. If the Administrator (or if appropriate the State) finds that the owner or operator of such point source has acted in good faith, he may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the point source to achieve the requirements of subsections (b)(1)(A) and (C) of this section and shall contain such other terms and conditions, including pretreatment and interim effluent limitations and water conservation requirements applicable to that point source, as the Administrator determines are necessary to carry out the provisions of this Act.

(B) No time modification granted by the Administrator (or if appropriate the State) pursuant to paragraph (2)(A) of this subsection shall extend beyond the earliest date practicable for compliance or

beyond the date of any extension granted to the appropriate publicly owned treatment works pursuant to paragraph (1) of this subsection, but in no event shall it extend beyond July 1, 1983; and no such time modification shall be granted unless (i) the publicly owned treatment works will be in operation and available to the point source before July 1, 1983, and will meet the requirements of subsections (b)(1)(B) and (C) of this section after receiving the discharge from that point source; and (ii) the point source and the publicly owned treatment works, the owner or operator of such point source to pay the costs required under section 204 of this Act [33 USCS § 1284], and the publicly owned treatment works to accept the discharge from the point source; and (iii) the permit for such point source requires that point source to meet all requirements under section 307(a) and (b) [33 USCS § 1317(a), (b)] during the period of such time modification.

(j) Modification procedures. (1) Any application filed under this section for a modification of the provisions of –

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not later than 270 days after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977];

(B) subsection (b)(2)(A) as it applies to pollutants identified in subsection (b)(2)(F) shall be filed not later than 270 days afer the date of promulgation of an applicable effluent guideline under section 304 [33 USCS § 1314] or not later than 270 days after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977], whichever is later.

(2) Any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this Act, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (b) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(k) Innovative Technology. In the case of any facility subject to a permit under section 402 [33 USCS § 1342] which proposes to comply with the requirements of subsection (b)(2)(A) of this sectdion by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs

than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 402 &33 USCS § 1342], in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) of this section no later than July 1, 1987, if it is also determined that such innovative system has the potential for industry-wide application.

(l) Toxic pollutants. The Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 307(a)(1) of this Act [33 USCS § 1317(a)(1)]. (June 30, 1948, ch 758, Title III, § 301, as added Oct. 18, 1972, P.L. 92-500, § 2, 86 Stat. 844; Dec. 27, 1977, P.L. 95-217, §§ 42-47, 53(c), 91 Stat. 1582.)

33 USC § 1319 Enforcement

(a) State enforcement; compliance orders. (1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 301, 302, 306, 307, 308, 318, or 405 of this Act [33 USCS § 1311, 1312, 1316, 1317, 1318, 1328, or 1345] in a permit issued by a State under an approved permit program under section 402 or 404 of this Act [33 USCS § 1342 or 1344], he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitations as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of "federally assumed enforcement"), except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation with respect to any person —

(A) by issuing an order to comply with such condition or limitation, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 301, 302, 306, 307, 308, 318, or 405 of this Act [33 USCS § 1311, 1312, 1316, 1317, 1318, 1328, or 1345], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act [33 USCS § 1342] by him or by a State or in a permit issued under section 404 of this Act [33 USCS § 1344] by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

(4) A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State in which the violation occurs and other affected States. In any case in which an order under this subsection (or notice to a violator under paragraph (1) of this subsection) is issued to a corporation, a copy of such order (or notice) shall be served on any appropriate corporate officers. An order issued under this subsection relating to a violation of section 308 of this Act [33 USCS § 1318] shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation.

(5)(A) any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(B) The Administrator may, if he determines (i) that any person who is a violator of, or any person who is otherwise not in compliance with, the time requirements under this Act or in any permit issued under this Act, has acted in good faith, and has made a commitment (in the form of contracts or other securities) of necessary resources to achieve compliance by the earliest possible date after July 1, 1977, but not later than April 1, 1979; (ii) that any extension under this provision will not result in the imposition of any additional controls on any other point or nonpoint

source; (iii) that an application for a permit under section 402 of this Act [33 USCS § 1342] was filed for such person prior to December 31, 1974; and (iv) that the facilities necessary for compliance with such requirements are under construction, grant an extension of the date referred to in section 301(b)(1)(A) [33 USCS § 1311(b)(1)(A)] to a date which will achieve compliance at the earliest time possible but not later than April 1, 1979.

(6) Whenever, on the basis of information available to him, the Administrator finds (A) that any person is in violation of section 301(b)(1)(A) or (C) of this Act [33 USCS § 1311(b)(1)(A), (C)], (B) that such person cannot meet the requirements for a time extension under section 301(i)(2) of this Act [33 USCS § 1311(i)(2)], and (C) that the most expeditious and appropriate means of compliance with this Act by such person is to discharge into a publicly owned treatment works, then, upon request of such person, the Administrator may issue an order requiring such person to comply with this Act at the earliest date practicable, but not later than July 1, 1983, by discharging into a publicly owned treatment works if such works concur with such order. Such order shall include a schedule of compliance.

(b) Civil actions. The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropropriate State.

(c) Criminal penalties. (1) Any person who willfully or negligently violates section 301, 302, 306, 307, or 308 of this Act [33 USCS § 1311, 1312, 1316, 1317, or 1318], or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act [33 USCS § 1342] by the Administrator or by a State or in a permit issued under section 404 of this Act [33 USCS § 1344] by a State, shall be punished by a fine or not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fined of not more than $10,000, or by imprisonment for not more than six months, or by both.

(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act [33 USCS § 1362(5)], any responsible corporate officer.

(d) Civil penalties. Any person who violates section 301, 302, 306, 307, 308, 318, or 405 of this Act [33 USCS § 1311, 1312, 1316, 1317, 1318, 1328, or 1345], or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act [33 USCS § 1342] by the Administrator, or by a State, or in a

permit issued under section 404 of this Act [33 USCS § 1344] by a State, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

(e) State liability for judgments and expenses. Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

(f) Wrongful introduction of pollutants into treatment works. Whenever, on the basis of any information available to him, the Administrator finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of subsection (d) of section 307 [33 USCS § 1317(d)], the Administrator may notify the owner or operator of such treatment works and the State of such violation. If the owner or operator of the treatment works does not commence appropriate enforcement action within 30 days of the date of such notification, the Administrator may commence a civil action for appropriate relief, including but not limited to, a permanent or temporary injunction, against the owner or operator of such treatment works. In any such civil action the Administrator shall join the owner or operator of such source as a party to the action. Such action shall be brought in the district court of the United States in the district in which the treatment works is located. Such court shall have jurisdiction to restrain such violation and to re-

quire the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with this Act. Notice of commencement of any such action shall be given to the State. Nothing in this subsection shall be construed to limit or prohibit any other authority the Administrator may have under this Ac.

(June 30, 1948, ch. 758, Title III, § 309, as added, Oct. 18, 1972, P.L. 92-500, § 2, 86 Stat. 859; Dec. 27, 1977, P.L. 95-217, §§ 54(b), 55, 56, 67(c)(2), 91 Stat. 1591.)

33 USC § 1345 Disposal or use of sewage sludge

(a) Permit. Notwithstanding any other provision of this Act or of any other law, in any case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act [33 USCS § 1292] (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of this Act [33 USCS § 1342].

(b) Issuance of permit; regulations. The Administrator shall issue regulations governing the issuance of permits for the disposal of sewage sludge subject to subsection (a) of this section and section 402 of this Act [33 USCS § 1342]. Such regulations shall require the application to such disposal of each criterion, factor, procedure, and requirement applicable to a permit issued under section 402 of this title [33 USCS § 1342].

(c) State permit program. Each State desiring to administer its own permit program for disposal of sewage

sludge subject to subsection (a) of this section within its jurisdiction may do so in accordance with section 402 of this Act [33 USCS § 1342].

(d) Regulations providing guidelines. The Administrator, after consulation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this subsection [enacted Dec. 27, 1977] and from time to time thereafter, regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes. Such regulations shall—

(1) identify uses for sludge, including disposal;

(2) specify factors to be taken into account in determining the measures and practices applicable to each such use or disposal (including publication of information on costs);

(3) identify concentrations of pollutants which interfere with each such use or disposal.

The Administrator is authorized to revise any regulation issued under this subsection.

(e) Local determination; compliance with guidelines. The determination of the manner of disposal or use of sludge is a local determination except that it shall be unlawful for the owner or operator of any publicly owned treatment works to dispose of sludge from such works for any use for which guidelines have been established pursuant to subsection (d) of this section, except in accordance with such guidelines.

(June 30, 1948 ch 758, Title IV, § 405, as added Oct. 18, 1972, P.L. 92-500, § 2, 86 Stat. 884; Dec. 27, 1977, P.L. 95-217, §§ 54(d), 68, 91 Stat. 1591.)

33 USC § 1370. State authority

Except as expressly provided in this Act, nothing in this Act shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this Act, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, efluent standard, prohibition, pretreatment standard, or standard of performance under this Act; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.

(June 30, 1984, ch. 758, Title V, § 510, as added, Oc 18, 1972, P.L. 92-500, § 2, 86 Stat. 893.)

Opposition

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No. 81-472

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

PRINCE GEORGE'S COUNTY, MARYLAND,
Petitioner,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

BRIEF IN OPPOSITION FOR RESPONDENTS WASHINGTON SUBURBAN SANITARY COMMISSION AND MONTGOMERY COUNTY, MARYLAND

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QUESTIONS PRESENTED

1. Whether, in view of the failure of Prince George's County officials to comply with the District Court's decree of July 10, 1978, that Court abused its discretion by issuing orders on April 25 and June 4, 1980 enforcing its 1978 decree.

2. Whether, after Prince George's County intervened in the federal court action and joined in a consent decree therein but subsequently initiated three obstructionist state court actions and procured a state court injunction prohibiting the Washington Suburban Sanitary Commission from complying with the District Court's decrees, that Court abused its discretion by enjoining all the parties hereto from taking any actions which would frustrate or impede that Court's prior judgments, orders, and decrees.

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BRIEF IN OPPOSITION FOR RESPONDENTS WASHINGTON SUBURBAN SANITARY COMMISSION AND MONTGOMERY COUNTY, MARYLAND

STATEMENT OF THE CASE

The petition herein seeks a writ of certiorari to review the Court of Appeals' affirmance of the latest round of orders entered by the District Court in a nearly decade-long litigation concerning governmental efforts to reduce pollution in the Potomac River. A fair appreciation of the case requires a fuller statement than that presented in the petition.

1. *The Blue Plains Sewage Treatment Plant*

The Blue Plains Sewage Treatment Plant, located in the District of Columbia, treats sewage from the District of Columbia, Prince George's County, Montgomery County, and Fairfax County (the "User Jurisdictions"). Sewage from Prince George's and Montgomery Counties is transmitted to the plant by the Washington Suburban Sanitary Commission ("WSSC"), the public agency which provides water and sewer service for those counties. The unwanted, but inevitable, by-product of the chemical treatment of sewage at that plant is sludge. The District of Columbia, however, claims that it lacks the means at Blue Plains for processing or disposing of all of the sludge. Thus, the User Jurisdictions have been engaged for several years in efforts to locate other sites for such processing and disposing.

2. *The July 29, 1974 Consent Decree*

In 1973, Fairfax County, the District of Columbia and the Virginia State Water Control Board filed suit in the District Court against WSSC because of a dispute concerning the use of the Blue Plains Plant. The plaintiffs alleged that WSSC was exceeding that share of plant capacity allotted to it under a 1971 agreement among User Jurisdictions, with the result that the plant was receiving more sewage than it could treat and was necessarily discharging into the Potomac River only partially treated, and sometimes even raw, sewage. (JA 1-46.)[1] The State of Maryland, Prince George's County and Montgomery County sought and received leave to intervene as defendants, and the United States intervened as a plaintiff. (JA 47-75.) Thereafter, in 1974,

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[1] "J.A. ——" citations refer to the Joint Appendix prepared by the parties in the court below. Respondent WSSC has requested that the clerk of that court transmit that Joint Appendix to this Court as promptly as possible.

the complaint was amended to include issues related to sludge disposal. (JA 120-125.)

Following extensive pleadings, discovery, and protracted negotiations among the User Jurisdictions, the parties arrived at a new, detailed agreement respecting treatment of sewage at the Blue Plains Plant. The agreement (App. 60a-79a),[2] signed in June of 1974 by Prince George's, Montgomery, and Fairfax Counties, the State of Maryland, the Maryland Environmental Services, WSSC, the District of Columbia, the Virginia State Water Control Board and the United States Environmental Protection Agency, contained comprehensive provisions regarding allocation of plant capacity, control of sewage flows, flow reporting, flow measuring and monitoring, reduction of flows, correction of raw sewage overflows, and a seven-page section on sludge management which, *inter alia*, established an interim sludge management plan and bound the parties to agree by July 1, 1976 on a permanent sludge disposal plan, to be effective no later than December 31, 1977. (JA 131-162.)

Following a thirty-day period in which the new Blue Plains Agreement was open for public comment, the parties joined in presenting to the District Court a proposed consent decree (JA 127-130) which incorporated the Agreement as Exhibit A. The decree recited that the parties agreed to comply fully with their obligations under the new agreement, that the agreement was fully enforceable under the decree and could only be revised or amended by order of Court, and that the Court would retain jurisdiction "in order to enforce the provisions of this Decree and to order any appropriate relief for violation thereof." (JA 128-129.) The consent decree

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[2] "App. ——" citations refer to the Appendix filed by petitioner, Prince George's County, Maryland, in this Court.

(App. 55a) was signed by all parties[3] and by the District Court on July 29, 1974 and filed on July 30, 1974.

3. *Failure to Reach an Agreement on a Permanent Sludge Disposal Plan*

Despite the July 1974 consent decree, a number of disputes continued to arise among the User Jurisdictions, and the District Court was repeatedly called upon to resolve them. The most significant problem was occasioned by the failure of the User Jurisdictions to agree on a permanent sludge disposal plan by July 1, 1976, as required by the consent decree. As a result, in November 1977 the United States filed a complaint in the District Court alleging that the User Jurisdictions had violated the Court's 1974 decree and that, due to the scheduled expiration of the interim sludge management plan on December 31, 1977, the Blue Plains plant would, on that date, be operating in violation of the Federal Water Pollution Control Act. (JA 164-178.)

The potential crisis was averted when the User Jurisdictions reached an agreement extending the interim sludge management plan until September 21, 1978, and extending the date by which they were to agree to a permanent sludge management plan until January 15, 1978. (JA 180-183.) On January 24, 1978, the District Court entered an order amending its July 1974 consent decree accordingly. (JA 179.)

4. *The July 10, 1978 Order*

The January 15, 1978 deadline for agreeing to a permanent sludge management plan passed without the User Jurisdictions reaching an agreement. Consequently, with the date for the expiration of the interim plan fast

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[3] The page of the consent decree bearing Prince George's County's signature was omitted from the Appendix. A copy of that page is reproduced as Appendix A to this brief.

approaching, the District Court entered an "emergency" order on May 18, 1978 (App. 52a), directing each User Jurisdiction to evaluate and designate sites within its boundaries for composting or disposing of its proportionate share of the Blue Plans sludge. (JA 184-185.) The User Jurisdictions submitted the required reports on June 5, 1978. (JA 186-203.)

In its report, Montgomery County designated a tract of land within that county ("Site 2") for sludge composting. On June 28, 1978, Prince George's County wrote the District Court a letter asking the Court to consider whether an alternative site in Montgomery County might not be more appropriate, and referring the Court to a report prepared by counsel for the neighborhood Calverton Citizens Association in which the potential health hazards of a composting facility were alleged.

After a series of hearings and other filings (JA 204-455, 466-473, and 478-488), the District Court issued a seven-page order on July 10, 1978. (App. 45a.) The order recited that failure of the User Jurisdictions to agree on a method of sludge disposal after September 21, 1978 would force curtailment of sewerage treatment at the Blue Plains plant which would in turn cause violation of the Federal Water Pollution Control Act, substantial harm to the Potomac River, and an emergency affecting the health and safety of the residents of the Washington metropolitan area. (JA 459-460.) The order then directed the User Jurisdictions to arrange for the disposition of their proportionate share of Blue Plains sludge at the specified sites which had been designated by the respective users including, *inter alia*, Site 2 in Montgomery County. (JA 460-463.) The order required that WSSC "take all actions necessary to manage sludge on the [Montgomery County and Prince George's County] sites designated in this order, including but not limited

to, acquisition of property rights, obtaining of all required permits, design, construction, and operation." (JA 463.) The order also provided that all parties "shall take all steps necessary to expedite review and processing (issuance or denial) of permit applications of the parties, their agents or contractors," and enjoined the parties from taking "any action which is not related to the protection of the public's health to prevent the disposal or composting of sludge from the Blue Plains Plant under this order." (App. 50a.)

With regard to the report prepared by the Calverton Citizens Association, the order recited that the Court had reviewed the submission and directed that Montgomery County, through WSSC, take whatever measures were necessary to assure that the public health, safety and welfare would be protected in the implementation of Site 2. (App. 51a.)

Prince George's County did not appeal any portion of the 1978 order, nor did any other party appeal the order with respect to Site 2. The District of Columbia, however, appealed that part of the order which designated a composting site in the District of Columbia on grounds that operating a composting facility there would create a health hazard similar to the one claimed in the Calverton Citizens Association's report and that the Court had no right to issue an order designating sludge disposal sites. Despite these objections, the 1978 order was affirmed by the United States Court of Appeals for the District of Columbia Circuit on June 7, 1979.[4] No petition for a writ of certiorari was filed with respect to that decision.

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[4] That decision without opinion is reported at 194 U.S.App.D.C. 401, 600 F.2d 281 (1979).

5. *Prince George's County's Obstruction of Efforts to Establish a Sludge Composting Facility at Site 2*

Initially, WSSC's efforts to acquire title to Site 2 and construct a sludge composting facility there, as necessitated by the District Court's 1978 order, moved ahead expeditiously. All six of the WSSC Commissioners[5] recognized that necessity and thus voted to include in the WSSC budget for the fiscal year July 1, 1979-June 30, 1980 approximately $16,990,000 for acquisition of title and initial construction costs. (JA 799).[6] Pursuant to their authority under state law, both the Montgomery County and Prince George's County Councils approved this budget by adoption of resolutions on May 31, 1979.[7]

The WSSC proceeded to obtain appraiser's reports concerning valuation of the Site 2 property, applied for the necessary permits from the Maryland Department of Health and Mental Hygiene, and commenced a condemnation action in the Circuit Court for Montgomery County. (JA 506-507.) However, in the spring of 1980, Prince George's County officials changed their position with respect to Site 2. On March 12, 1980 the three WSSC Commissioners from Prince George's County refused to vote for inclusion of any Site 2 funds in the WSSC budget which was to take effect on July 1, 1980. (JA 508-

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[5] The WSSC is governed by a board of six commissioners, three of whom are selected by Montgomery County and three of whom are selected by Prince George's County.

[6] Funds for Site 2 appear in the WSSC budget under the line item titled "Project 118."

[7] The petition incorrectly states (at 5) that "the funds that WSSC provided in its 1979-80 budget for Site 2 land acquisition had never been given the required approval by [Prince George's] County . . . ." Included in the Joint Appendix in the Court of Appeals is the document (JA 797) by which Prince George's County gave precisely that approval.

509.) Although the three Montgomery County Commissioners did vote to include Site 2 funds, the failure to obtain a majority vote of the six Commissioners meant that no funds would be available for Site 2 acquisition or construction after June 30, 1980.[8] Moreover, as described below, Prince George's County instituted three separate Maryland state court actions which sought relief that would have precluded WSSC from constructing the required sludge composting facility at Site 2.

6. *The April 25, 1930 Order*

Following the March 12, 1980 vote of WSSC Commissioners, which effectively blocked construction of a sludge composting facility at Site 2, Montgomery County filed a motion asking that the District Court order WSSC to put Site 2 back into its FY 1981 budget and capital improvement plan and that it take all actions necessary to establish a sludge composting facility at Site 2 by December 1981. (JA 501-527.) Following the receipt of legal memoranda from Prince George's County (JA 528-541 and 573-585) and other parties (JA 542-572), and an extensive hearing (JA 590-660), the District Court, on April 25, 1980, entered an order (App. 43a) which required WSSC to put Site 2 back into its budget and capital plan and "to take all actions necessary to . . . place Site 2 into operation at the earliest practicable date." (JA 588-589.) On May 8, 1980, Prince George's County noted an appeal from this order (JA 662) but did not seek a stay until June 4, 1980. (JA 726-739.)

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[8] The petition disingenuously refers (at 6) to this March 12, 1980 action as "WSSC's vote to delete [Site 2] acquisition funds from the budget," thereby implying that there was unanimity or at least majority consensus on the matter. In fact, the three Montgomery County Commissioners affirmatively voted to *include* such funds in the WSSC budget but were deadlocked by the contrary vote of the three Prince George's County Commissioners.

7. *The June 4, 1980 Order*

Despite the District Court's April 25, 1980 order, the three WSSC Commissioners from Prince George's County still refused to vote for inclusion of Site 2 funds in the WSSC budget. On May 8, 1980, a motion to reinsert Site 2 in the budget was made, but the Prince George's County Commissioners declined to vote affirmatively on the motion. (JA 667.)

Montgomery County then filed a motion to hold the three Prince George's County Commissioners in contempt of court. (JA 664-682.) In response to this motion, the three Prince George's County Commissioners filed a legal memorandum (JA 716-723) which asserted that inclusion of Site 2 in the WSSC budget was mandated by the District Court order of July 10, 1978 and that the WSSC Commissioners thus had no discretion to exercise in the matter:

> The effect of the Court's orders of July 10, 1978 and April 25, 1980 is clear. The Commission has no discretion about including Site 2 in the CIP and Budgets as long as the orders are in force. No vote of the Commission was required to implement the April 25 order, and no vote of the Commission could defeat it. All that is needed to implement the specific directive of the April 25 order is ministerial action to put Site 2 in the CIP and the Budgets. The April 25 order reflected the Court's determination that removal of Site 2 from the CIP and Budget on March 12 did not comport with its order of July 10, 1980. The April 25 order rectified this action. It did not purport to require the Commissioners to pass a resolution for inclusion of Site 2 or to act in a legislative capacity to achieve its directive. Nor did it seek to compel any Commissioner to vote contrary to his or her own judgment. Rather, it clearly commanded the result to be attained. No vote by the Commission could frustrate that result. (JA 717-718).

After reviewing this response and a lengthy legal memorandum by Prince George's County (JA 687-714), and after a second extended hearing (JA 743-772), the District Court declined to hold the three Prince George's County Commissioners in contempt. However, the Court did enter an order on June 4, 1980 which reaffirmed its July 10, 1978 and April 25, 1980 orders, held that inclusion of Site 2 in the budget was a purely ministerial act that should have been carried out by the WSSC General Manager, and directed that WSSC proceed with the Site 2 project regardless of whether the Prince George's County Commissioners voted in favor of the project. (App. 41a.) Pursuant to this order, the General Manager of the WSSC inserted Site 2 in the WSSC budget.

On June 5, 1980, Prince George's County sought from the District Court a stay (JA 726-739) of its April 25, 1980 and June 4, 1980 orders, and on June 10, 1980 it noted an appeal from the June 4 order. (JA 740.) On June 19, 1980 the District Court denied the motion for stay (JA 773 and 1185-1186), and Prince George's County did not institute any further action to secure a stay of these orders.

8. *State Court Actions Filed by Prince George's County Which Threatened to Prevent Effectuation of the District Court's July 10, 1978 Order*

Following the District Court's July 10, 1978 order, Prince George's County filed three state court actions, two in the Circuit Court for Prince George's County and one in the Circuit Court for Montgomery County, which actions threatened to prevent effectuation of that order.

In the first action,[9] filed in the Prince George's County Circuit Court on November 27, 1979, Prince George's County sought an order enjoining WSSC from acquiring

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[9] Prince George's County v. Washington Suburban Sanitary Commission, Equity No. E-7692.

Site 2 on the ground that such an acquisition was illegal without the approval of Prince George's County, and the County was unwilling to give the requisite approval. (JA 861.) The Circuit Court rejected Prince George's County's arguments and dismissed the complaint on December 21, 1979. The County filed an appeal on January 21, 1980. (JA 861.)

The second action,[10] also filed in the Prince George's County Circuit Court, was brought by Prince George's County in concert with certain residents of the Calverton area surrounding Site 2. In that action, filed on April 16, 1980, the plaintiffs seek an order enjoining WSSC from acquiring Site 2 on the grounds that the acquisition would necessitate a gross waste of the ratepayers' money and would create health risks. (JA 861.) On June 17, 1980, the Circuit Court, although informed by WSSC of the District Court's contrary orders, issued a temporary injunction forbidding WSSC from proceeding with the acquisition of Site 2 and ordering it to withdraw the purchase offer it had made to the owners of Site 2. (JA 848-849.) It was this state court injunction which necessitated the District Court's June 27, 1980 order, discussed below.

The third action,[11] filed in the Montgomery County Circuit Court on April 16, 1980 by Prince George's County, the Calverton Citizens Association, and certain residents of the Calverton area, seeks an order enjoining WSSC from taking any action toward the construction of a sewage sludge composting facility at Site 2 on the ground that the planned facility constitutes a prospective nuisance. The plaintiffs also challenge the legality of the permit that has been issued by the Maryland De-

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[10] Prince George's County, et al. v. Washington Suburban Sanitary Commission, Equity No. E-8512.

[11] Calverton Citizens Association, Inc., et al. v. Buck, et al., Equity No. E-70934.

partment of Health and Mental Hygiene for the handling of sewage at Site 2. (JA 862.)

9. *The June 17, 1980 Order*

The June 17, 1980 order of the Prince George's County Circuit Court (JA 848), enjoining WSSC from acquiring Site 2, placed WSSC in an intolerable position. The District Court's 1974 Consent Decree and implementing orders of July 10, 1978, April 25, 1980 and June 4, 1980 required WSSC to acquire the property rights to Site 2 and to place a sludge composting facility in operation there "at the earliest practicable date." The state court order of June 17, 1980, however, enjoined WSSC from proceeding with the purchase of that land. Thus, as long as it remained subject to both orders, WSSC risked contempt of court sanctions from the state court if it proceeded with the Site 2 project and contempt of court sanctions from the federal court if it did not.

Consequently, the WSSC filed a motion requesting that the District Court issue an order to protect and effectuate its judgments, orders, and decrees. (JA 851-876.) This motion was opposed by Prince George's County (JA 1020-1040, 1048-1052) but supported by the United States, the State of Maryland, the State of Virginia, and Montgomery County. (JA 1013-1020, 1045-1048.) Montgomery County also filed a similar motion for supplemental and injunctive relief. (JA 781-787.) Following a third extended hearing (JA 1005-1057), the District Court, on June 17, 1980, issued an order (App. 27a) which, in pertinent part:

> (i) ordered WSSC to comply with the Court's prior decrees, despite the entry of the injunctive order by the Circuit Court for Prince George's County enjoining WSSC from complying with portions of those decrees;
>
> (ii) ordered the parties in the federal case to bring all disputes among them concerning the Dis-

trict Court's orders before the District Court, rather than attempting to circumvent those orders by seeking contradictory orders from state courts; and

(iii) invited persons who were not parties to this litigation to petition the Court for limited intervention in the event they believed that grounds existed for modifying or rescinding any of the District Court's orders in this matter.

10. *Actions Taken Subsequent to the June 27, 1980 Order*

On June 27, 1980, Prince George's County filed motions for a stay of the District Court's order of that date with the District Court and the Court of Appeals. (JA 894-916, 977-1003.) The District Court denied a stay on the evening of June 27 (JA 975-976), and the Court of Appeals, after granting a temporary stay on June 28 in order to allow the parties time to file memoranda (JA 1058), dissolved its stay on July 3, 1980. (JA 1064.) Subsequently, Prince George's County filed two stay petitions in this Court, one with Justice Brennan and one with Justice Rehnquist. (JA 1065-1088, 1182-1184.) Both petitions were denied.

11. *Court of Appeals Affirmance of the District Court's 1980 Order*

Following full briefing and oral argument, the Court of Appeals affirmed the District Court's three 1980 orders in all respects. In a unanimous June 10, 1981 decision (App. 1a), Circuit Judges McGowan, Tamm, and Wald found Prince George's County's arguments—the same ones presented in the instant petition—without merit, concluding that "the actions taken by the district court were necessary to effectuate its 1978 order and to ensure the long overdue implementation of a regional sludge management plan." (App. 21a.) The present petition seeks review of this Court of Appeals decision.

12. *Prince George's County's Inability to Demonstrate that the 1978 Order Should Be Changed*

After the Court of Appeals' affirmance of the District Court's 1980 orders, Prince George's County filed a motion in the District Court asking that court to modify its 1978 sludge management order so as to delete Site 2 and substitute therefor an alternate location. On July 28, 1981, the District Court denied that motion on grounds that Prince George's County had failed to make the showing required for such a change. This decision by the District Court was not appealed by Prince George's County [12] and is not sought to be reversed by the present petition.

13. *The Imminent Completion of the Site 2 Facility*

In compliance with the several orders issued by the District Court, and the denials of a stay by that Court, the Court of Appeals, and this Court, WSSC has proceeded forward with the Site 2 project. To date, approximately $7.5 million have been spent on acquisition of this land and construction of the sludge composting facility. Construction is now in its third and final phase and the facility is scheduled to be completed by October 1982.

SUMMARY OF ARGUMENT

On July 29, 1974 all of the parties to this case entered into a Consent Decree which incorporated a comprehensive agreement concerning sewage treatment and sludge disposal and vested the District Court with continuing jurisdiction to enforce that agreement and provide appropriate remedies for violations thereof. Since that time the District Court has been adjudicating the numerous controversies that have arisen because of the failure of various parties to comply with the decree and

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[12] The time to institute such an appeal has now expired.

agreement. On occasions, pursuant to procedures specified in the decree, the District Court has also granted motions to amend various provisions of the agreement.

On July 10, 1978, faced with the imminent threat of a severe public health emergency due to the parties' failure to agree on a permanent sludge disposal plan, the District Court entered an order requiring User Jurisdictions to establish, at designated sites within their borders, facilities for disposing of their proportionate share of the sludge generated at the Blue Plains Sewage Treatment Plant. The site designated for disposition of Montgomery County sludge—"Site 2"—had been selected by Montgomery County, and the Washington Suburban Sanitary Commission was directed to acquire title to the site and construct a sludge composting facility there. No party appealed any part of this order relating to Site 2. The District of Columbia appealed that part of the 1978 order requiring it to establish a sludge composting facility at a particular location in the District, and the Court of Appeals affirmed the order.

In the spring of 1980, at the request of the United States and several other parties, the District Court was required to issue three separate orders designed to protect and effectuate the 1974 consent decree and the 1978 order. On April 25 and June 4, 1980, it ordered that funds previously approved and budgeted for Site 2, but subsequently omitted from the WSSC budget due to actions of Prince George's County's WSSC Commissioners, be restored to the budget so that the composting facility at Site 2 could be constructed as promptly as practicable. On June 27, 1980, after Prince George's County had instituted three state court actions designed to block construction of a sludge disposal facility at Site 2 and had even obtained in one of those actions an injunction prohibiting WSSC from expending any funds on Site 2, the District Court enjoined all parties to the consent

decree from prosecuting against each other any collateral legal proceedings which would frustrate or prevent effectuation of its judgments, orders and decrees in this matter.

Now, in the Court of Appeals and in this Court, Prince George's County contends that the District Court's orders were "unconstitutional," "improper," "unnecessary," "unsupported," and otherwise reversible. This position is preposterous. It amounts to an assertion that a federal court, on whom state and local governmental authorities have voluntarily conferred broad supervisory powers pursuant to a consent decree, is impotent to prevent one recalcitrant party from unraveling a comprehensive, regional pollution-control program by disobeying federal court orders and securing contrary orders from various state courts.

None of the authorities and arguments offered by petitioner support the bizarre position it urges. Plainly the April 25 and June 4, 1980 orders do not improperly preempt the legitimate discretion of state agencies in budgeting their activities, but merely direct the ministerial act of restoring to the budget a sum of money previously approved and budgeted for purposes of compliance with the 1978 federal court order. Nor do the orders violate the Tenth Amendment to the United States Constitution. Since the orders are premised on the contractual nature of the consent decree and not a Congressional mandate, they do not even involve questions of federalism and thus the Tenth Amendment has nothing to do with the matter. Even if it did, however, the orders, being remedial in character and consistent with the necessities with which the District Court was confronted, are entirely proper under *Milliken v. Bradley*, 433 U.S. 267 (1977); *National League of Cities v. Usery*, 426 U.S. 833 (1976); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, *reh. denied*, 403 U.S.

912 (1971); *Doe v. Ceci*, 517 F.2d 1203 (7th Cir. 1975); and numerous other cases.

Petitioner's challenge to the June 27, 1980 order is equally fallacious. Certainly, in view of the campaign of state court actions initiated by Prince George's County, one of which had already produced a state court order prohibiting WSSC from complying with the orders of the District Court, the June 27 order was urgently needed to protect and effectuate the federal court's prior orders in this case. In those circumstances, 28 U.S.C. § 2283; *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970); *Henry v. First National Bank of Clarksdale*, 595 F.2d 291 (5th Cir.), *reh. denied, mem.*, 601 F.2d 586 (1979), *cert. denied*, 444 U.S. 1074 (1980); *Samuel C. Ennis & Co., Inc. v. Woodmar Realty Co.*, 542 F.2d 45 (7th Cir. 1976), *cert. denied*, 429 U.S. 1096 (1977), and many other cases provide ample authority for the sort of order issued here. As the Court of Appeals properly recognized, this order was designed to assure compliance with previous decrees of the District Court which remain in full force and effect unless properly modified. Confronted with the repeated efforts of one party to circumvent those decrees by inducing budgetary deadlocks and obtaining contradictory state court injunctions, the District Court had the right and duty to issue its three 1980 orders so as to protect and effectuate its own decrees and properly safeguard the public interest.

There is thus no reason to grant a writ of certiorari in this matter and Prince George's County's petition for such a writ should be denied.

ARGUMENT

I. THE ORDERS SOUGHT TO BE REVIEWED ARE NOT UNCONSTITUTIONAL

According to Petitioner, the Court of Appeals failed to appreciate that the District Court orders sought to be reviewed violate the principle of federalism embodied in the Tenth Amendemnt and are thus unconstitutional. This contention is without merit. The Court of Appeals carefully examined the purpose and effect of the orders at issue and found, properly, that they are perfectly consistent with that constitutional provision and with decisions of this Court which have construed it.

A. The Orders Do Not Involve Questions of Federalism and Thus the Tenth Amendment Does Not Apply

The principal weakness of Prince George's County's petition, as the Court of Appeals recognized (App. 14a), is that the Tenth Amendment is not at issue here. Petitioner's contention that the District Court's April 25 and June 4 orders were actions taken pursuant to Congressional action and that somehow impaired state sovereignty in violation of the Tenth Amendment is patently absurd. The April 25 and June 4 orders, like the July 10 order, were not issued by Congress, nor were they issued because of any Congressional directive. Rather, they were issued because all jurisdictions using the Blue Plains plant had entered into a consent decree requesting the District Court to adjudicate their sewage controversies, because Montgomery County had designated Site 2 as a sludge disposal site, and because Prince George's County had taken actions aimed at preventing Montgomery County from utilizing Site 2. These orders were thus issued pursuant to contractual authority (the consent decree) of the parties and would in no way result in a "wield[ing] [of] power in a fashion that would

impair the States' 'ability to function effectively in a federal system.'" *National League of Cities v. Usery*, 426 U.S. 833, 852 (1976), *on remand sub nom. National League of Cities v. Marshall*, 429 F. Supp. 703 (D.D.C. 1977). The Tenth Amendment simply has nothing to do with this case.

B. The Orders Do Not Improperly Preempt State Action

Petitioner extravagantly contends that the District Court's orders "drastically invaded state sovereignty" and eliminated "the power of the state to consider vital concerns for the public health and safety of its citizens which surround the purchase and use of the site for its proposed purpose." (Pet. 10.) These charges are unfounded.

By its April 25 and June 4 orders, the District Court merely required restoration to the WSSC budget of the $16,990,000 which the WSSC and Montgomery and Prince George's County Councils had previously determined, through their normal budgeting process, was the sum of money necessary to establish the Site 2 facility required by the 1978 order, which order none of them had appealed. This restoration action was, in the words of the three Prince George's County Commissioners involved, a purely "ministerial" act which did not call for the exercise of any discretion by state officials. (JA 717-718.)

While the District Court's June 27 order did require WSSC to proceed with construction of the facility at Site 2, it plainly left to state agencies their appropriate supervisory roles with respect to that activity. Thus, title to the property was acquired by WSSC through initiation of a state court condemnation action [13] and subse-

[13] WSSC v. Percontee, Inc., Law No. 50304 and WSSC v. Montgomery Industrial Park, Law No. 50305, (Montgomery County Cir. Ct.).

quent negotiation with the owner concerning the purchase price. Clearing the land of restrictive covenants is also being accomplished by WSSC through a second state court action.[14] And, as required by the District Court's 1978 order (App. 50a), WSSC has obtained from Maryland state health authorities a permit for operation of the facility.

Moreover, both the District Court's June 27, 1980 order (App. 33a) and the affirming decision of the Court of Appeals (App. 20a) recognize the right of Prince George's County to apply to the District Court for modification of the 1978 order by replacement of Site 2 with an alternate site, notwithstanding Prince George's County's failure to note a timely appeal from that order and the reliance which other parties may have placed on that order in the ensuing three years.[15] Finally, of course, none of the District Court orders preclude any state from passing any water pollution legislation, which is the real nature of authority shared by Congress and the states under the Federal Water Pollution Control Act Amendments of 1972.

In short, the orders in question do not preempt any state action whatever except, of course, disobedience of the obligations imposed by the July 10, 1978 order, which is exactly the sort of action which a federal court has every right to prevent.

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[14] WSSC v. Frankel, et al., Law No. 56245 (Montgomery County Cir. Ct.).

[15] Following the Court of Appeals decision, Prince George's County did seek such modification, which the District Court denied on grounds that the County had not made the required showing. Prince George's County did not appeal that denial.

C. Even if Questions of Federalism Were Involved, the Orders Would Not Violate the Tenth Amendment Because They are Remedial in Nature and are Consistent with the Necessities of the Situation that was Confronting the District Court

As already pointed out, the April 25 and June 4, 1980 orders cannot be violative of the Tenth Amendment because they were not issued pursuant to any Congressional or constitutional directives and do not, therefore, involve any principles of federalism. Even if they did, however, there is no question that they would be constitutional.

Petitioner cites no authority for its remarkable contention that orders such as the April 25 and June 4, 1980 orders are unconstitutional violations of the Tenth Amendment. The cases it cites stand merely for the self-evident proposition that Congress may not pass legislation impairing state sovereignty. That fact, however, does not preclude federal courts, even when they are acting pursuant to Congressional or constitutional directives, from taking actions much more drastic than the action that was taken in the case at hand. As this Court has explained, the Tenth Amendment does not invalidate decrees simply because those decrees impinge upon the interests of state and local authorities in managing their own affairs. Such decrees are constitutional if they are "remedial in nature," prescribe a remedy that is "tailored to cure the condition" sought to be remedied, and "take into account" principles of federalism. *Milliken v. Bradley*, 433 U.S. 267, 280-81, 282 (1977). Applying that standard, district court orders have been upheld that redistricted state electoral jurisdictions,[16] required schools to provide comprehensive remedial education programs[17] and special in-service training for

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[16] *See, e.g.*, Reynolds v. Sims, 377 U.S. 533, 586-87 (1964).

[17] *See, e.g.*, Milliken v. Bradley, *supra* at 283-88; Plaquemines Parish School Bd. v. United States, 415 F.2d 817, 831 (5th Cir. 1969); United States v. Texas, 447 F.2d 441, 448 (5th Cir. 1971), *cert. denied sub nom.* Edgar v. United States, 404 U.S. 1016 (1972).

teachers,[18] suspended testing programs employed by school systems,[19] required schools to reassign teachers[20] and extensively bus students,[21] enjoined state officials from creating new school districts,[22] and ordered county officials to finance indigents' abortions.[23]

Petitioner's contention that the Court of Appeals decision conflicts with *National League of Cities v. Usery*, 426 U.S. 833 (1976), is unsound. The Court of Appeals carefully considered the impact of *Usery* and concluded, correctly, that it does not preclude a federal court from requiring compliance with a regional sewage treatment

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[18] *See, e.g.*, Milliken v. Bradley, *supra* at 283-88, United States v. Missouri, 523 F.2d 885, 887 (8th Cir. 1975); Smith v. St. Tammany Parish School Board, 302 F. Supp. 106, 110 (E.D. La. 1969), *aff'd*, 448 F.2d 414 (5th Cir. 1971).

[19] *See, e.g.*, Milliken v. Bradley, *supra* at 283-88; Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211, 1219 (5th Cir. 1969), *cert. denied*, 396 U.S. 1032, (1970); Lemon v. Bossier Parish School Board, 444 F.2d 1400, 1401 (5th Cir. 1971).

[20] *See, e.g.*, United States v. Montgomery County Board of Education, 395 U.S. 225, 235-36 (1969); Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 19-20, *reh. denied*, 403 U.S. 912 (1971).

[21] *See, e.g.*, Swann v. Charlotte-Mecklenburg Board of Education, *supra*, 402 U.S. at 22-31.

[22] *See, e.g.*, Wright v. Council of the City of Emporia, 407 U.S. 451 (1972); United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

[23] In Doe v. Ceci, 517 F.2d 1203 (7th Cir. 1975), a federal district court ordered county officials to make the physical facilities of a county hospital available for non-therapeutic abortions. County officials, however, failed to provide the necessary public funds in order to comply with that order. The Seventh Circuit held that, although the issue of funding had not been addressed by the District Court, it was implicit in the District Court's order and county officials were obligated to provide whatever public funds were necessary to comply with the order.

plan devised by state and local authorities pursuant to their own consent decree. Indeed, Prince George's County concedes as much when it states "certainly the federal government has plenary power over environmental protection, including water pollution, and the federal court had authority to require user jurisdictions of the Blue Plains facility to devise a plan to dispose of sludge in order to comply with federal requirements." (Pet. 10.) To argue that the District Court had authority to require creation of a plan but no authority to require compliance with the plan so created is ludicrous.

The District Court's orders are, thus, clearly constitutional. They are remedial in nature, having been issued because of a failure to comply with the Court's July 10, 1978 order (which, in turn, was issued because the failure of the jurisdictions using the Blue Plains plant to reach a permanent agreement concerning sludge disposal, as required by their 1974 consent decree, had created a public health emergency). They are tailored to cure the problems that necessitated remedial action. And they take into account the interests of state and local authorities in managing their own affairs, since they were issued at the request of Montgomery County, they allow each local jurisdiction to designate its own sludge disposal site, and they impinge on the management of WSSC only to the "purely ministerial" extent necessitated by the circumstances.

II. THE JUNE 27, 1980 ORDER OF THE DISTRICT COURT DOES NOT VIOLATE THE ANTI-INJUNCTION ACT

In addition to its constitutional argument, discussed above, petitioner also contends that the June 27, 1980 order of the District Court violates the Anti-Injunction Act, 28 U.S.C. § 2283, and that the Court of Appeals' affirmance of the order is therefore inconsistent with the Act. This contention rests on fundamental misconcep-

tions about the nature of the orders at issue and the scope of the Anti-Injunction Act.

A. The 1978 Order is Site Specific

In its petition, Prince George's County repeatedly asserts that the District Court's 1978 order—which the orders at issue sought to effectuate—"was result-oriented, not site-oriented," *i.e.*, that the order was concerned only with ensuring that Montgomery County dispose of sludge at *some* location within its borders, the identity of that location being immaterial. (Pet. 16, 18.) From this premise, Prince George's County concludes that the state court order enjoining WSSC from proceeding with Site 2 did not really prevent effectuation of the District Court's 1978 order:

> The Court of Appeals considered it sufficient that the state court was enjoining one course of conduct which would have complied with the federal court order (the purchase and development of Site 2). However, other courses of conduct were available which would have equally complied, namely, the purchase and development of an alternate site. (Pet. 18.)

Petitioner's argument here rests on a faulty premise. The 1978 order *is* site specific. It resulted from an earlier directive that each party "designate in writing to the [District] Court by June 5, 1978 a site or sites within its boundaries for composting or disposal of its proportionate share of digested and undigested sludge . . ." (App. 53a), after which Montgomery County filed a report designating Site 2. The July 10, 1978 order then spells out a precise timetable (App. 47a-49a) for disposition of sludge at a series of very specifically designated sites—"P.G. 4 site," "approximately 30 acres of a site owned by Montgomery County, Maryland, and located between Shiloh Church Road and Interstate 70 near Clarksburg," "a site owned by Contee

Sand and Gravel Company and Montgomery Industrial Park, Inc., and located adjacent to the Montgomery Industrial Park on Route 29 in Montgomery County, Maryland" [i.e., Site 2], etc.—which sites were derived from the reports submitted by the parties. Indeed, although other sites are discussed only in this timetable portion of the 1978 order, Site 2 is singled out and twice mentioned by name in a separate provision making special arrangements for its implementation. (App. 50a-51a.)

Thus, the July 10, 1978 order of the District Court was explicitly and specifically site-oriented and required sludge disposal at particular locations. While Prince George's County was certainly entitled to appeal that order (which it did not do), or seek modification of it (which it did not do for three years), petitioner was not entitled to obtain from its own county court an order enjoining WSSC from implementing Site 2. When Prince George's County did seek and obtain just such a state court order, the District Court was clearly warranted in issuing its June 27, 1980 order designed to protect and effectuate its earlier judgments and decrees.

B. The June 27, 1980 Order was Necessary to Protect and Effectuate the District Court's Prior Decrees and Is Not Prohibited by the Anti-Injunction Act

The June 27, 1980 order required Prince George's County to withdraw the complaints that it had filed "against other parties to this action for relief which, if granted, would impede or frustrate effectuation of any orders entered by [the District] Court in these proceedings." (App. 32a.) That order was necessary because Prince George's County had filed three state court actions aimed at "vacating" those portions of the District Court's orders that it found objectionable and had already obtained such a state court injunction in one of those actions.

28 U.S.C. § 2283 expressly provides that a federal court may enjoin state court proceedings in order "to protect or effectuate its judgments." As a result, federal courts necessarily are empowered to enjoin the parties before them from pursuing state court actions which seek relief inconsistent with that already ordered by the court.

Petitioner recognizes all this but asserts that the federal court's power to protect or effectuate its decrees by enjoining state court proceedings exists only when the causes of action in the state court proceedings are the same as those in the federal court litigation. (Pet. 14-15.) This position is contrary to the terms of the statute, illogical, and totally without precedent.

28 U.S.C. § 2283 is, by its own terms, applicable *whenever* an injunctive order is necessary to protect or effectuate a federal court decree. Necessarily, therefore, it is applicable where, as here, (i) a state court orders a party to refrain from doing what a federal injunctive decree compels it to do and (ii) a party seeks to relitigate in state court an issue (*i.e.*, the propriety of using Site 2 for composting facilities) that has already been litigated and decided by a federal court. *Samuel C. Ennis & Co., Inc. v. Woodmar Realty Co.*, 542 F.2d 45, 49 (7th Cir. 1976), *cert. denied*, 429 U.S. 1096 (1977) (causes of action in federal and state actions not the same, but § 2283 applied because, regardless of the causes of action involved, "[t]he 'effectuate its judgment' exception . . . allow[s] the federal courts to enjoin relitigation . . . of issues determied by federal judgments"); *Doe v. Ceci*, 517 F.2d 1203, 1207 (7th Cir. 1975) (causes of action in federal and state actions not the same, but § 2283 applied); *Baker v. Gotz*, 415 F. Supp. 1243, 1250-51 (D. Del. 1976) *aff'd mem.* 546 F.2d 415 (3d Cir. 1976) ("reason for the rule [permitting federal courts to enjoin state court actions] . . . is to protect the

party who has succeeded in the federal court against being put to the inconvenience and expense of relitigating the same issue and from being subject to the possibility of a contrary decision by the state court which would nullify or impair the effect of the federal judgment"); *Henry v. National Bank of Clarksdale*, 595 F.2d 291, 307 (5th Cir.), *reh. denied mem.*, 601 F.2d 586 (1979), *cert. denied*, 444 U.S. 1074 (1980) (§ 2283 applicable because state court order placed parties in "the unacceptable position of being ordered by the state Chancery Court to do precisely what the federal injunction orders them not to do"); *New York State Ass'n for Retarded Children v. Carey*, 456 F. Supp. 85, 97-98 (E.D.N.Y. 1978) (district court properly enjoined a state proceeding which would have interfered with its disposition of prior federal action); WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 4226 at 344 (1978) (§ 2283 is applicable "[e]ven if the claims are different"; federal court has the power "to effectuate its judgment by enjoining relitigation of issues it has determined").

None of the cases cited by petitioner provides any support for its position; not one states that the applicability of § 2283 is to be determined by comparing the causes of action in the federal and state cases. Indeed, adoption of such a rule would effectively gut the "protect or effectuate" provision in the statute since a litigant wishing to circumvent with impunity the obligations imposed on him by a federal court order would need only to cast his state court suit in terms of a different cause of action, something quite easily done. Certanly the Court of Appeals gave proper effect to the statute when it held that this Court's decision in *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970), "mandates an examination of the effect a state proceeding would have on a prior federal judgment, rather than a comparison of formal causes of action." (App. 18a.)

CONCLUSION

The decision of the Court of Appeals affirming the three District Court orders at issue is not inconsistent with the Tenth Amendment, the Anti-Injunction Act, nor with any decisions of this Court or another Court of Appeals. There is no reason to grant a writ of certiorari in this case and the petition for such a writ should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

PRINCE GEORGE'S COUNTY, MARYLAND,
Intervenor-Defendant,

JOSEPH S. CASULA
County Attorney

By: /s/ John R. Barr
JOHN R. BARR
Associate County Attorney

Opposition

2

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ALEXANDER L. STEVAS,
CLERK

No. 81-472

In the Supreme Court of the United States

OCTOBER TERM, 1981

PRINCE GEORGE'S COUNTY, MARYLAND, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court's orders enforcing that court's earlier order of July 10, 1978, which required the construction of a sludge composting facility, violated the Tenth Amendment.

2. Whether the district court's order of June 27, 1980, enjoining the Washington Suburban Sanitary Commission from complying with a Maryland state court order which conflicted with a prior order entered by the district court, and directing petitioner to abandon state court litigation which would frustrate enforcement of the district court's prior order, violated the Anti-Injunction Act, 28 U.S.C. 2283.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 654 F.2d 802. The district court's orders (Pet. App. 25a-33a, 41a-42a, 43a-44a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on June 10, 1981. The petition for a writ of certiorari was filed on September 8, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The petition for a writ of certiorari marks a chapter in a long standing controversy and an

equally protracted litigation surrounding the operation of the Blue Plains sewage treatment plant in Washington, D.C. The Blue Plains plant treats sewage originating in the District of Columbia, Montgomery County, Maryland, Prince George's County, Maryland and Fairfax County, Virginia. This litigation was commenced on September 24, 1973, when the Virginia State Water Control Board, Fairfax County and the District of Columbia filed suit in the United States District Court for the District of Columbia (Civil Action No. 1813-73) against the Washington Suburban Sanitary Commission ("WSSC") (Pet. App. 4a-5a).[1] The complaint alleged that WSSC's failure to limit sewer hookups in the Maryland jurisdictions it serves violated agreements among the jurisdictions governing use of the Blue Plains plant and had exacerbated violations of federal water quality standards caused by excess sewage flows which bypassed the treatment equipment at Blue Plains and were discharged as untreated sewage into the Potomac River. The United States intervened as a party-plaintiff to protect the public interest and ensure compliance with federal laws, including the Clean Water Act, 33 U.S.C. 1251 *et seq.* Montgomery County and petitioner, Prince George's County—the Maryland Counties served by the WSSC—intervened as parties-defendant (Pet. App. 5a).

In addition to the excess flow issue, this first action also presented a question regarding the disposal

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[1] The WSSC is an agency formed under the laws of Maryland to serve the sewage and water supply needs of Montgomery County and Prince George's County. It is composed of six commissioners—three appointed by Montgomery County and three appointed by Prince George's County.

of sludge[2] generated by the Blue Plains facility. In fact, shortly after the suit was filed a dispute concerning sludge disposal threatened to force the shutdown of the Blue Plains plant. In February 1974 the district court ordered the Maryland counties to accept sludge for disposal in order to resolve that dispute.

After several months of negotiations, a consent agreement intended to resolve the issues in suit was executed by all of the parties, and submitted to the court for approval (Pet. App. 60a-79a). The 1974 Agreement was incorporated in an order (*id.* at 55a-59a) issued by the district court on July 29, 1974, which required court approval for any modification of its terms. The district court retained jurisdiction, and this jurisdiction continues to date.

The 1974 Agreement resolved the excess flow questions by establishing a maximum allowable flow of 309 million gallons per day for the Blue Plains plant and allocating portions of the allowable flow to each of the user jurisdictions (Pet. App. 61a-70a). More importantly, the 1974 Agreement also established a framework for resolving the sludge disposal controversy. Under the 1974 Agreement, the user jurisdictions were to devise a permanent plan for the disposal of the sludge produced at the plant by June 30, 1976, and to implement the permanent plan by December 31, 1977 (*id.* at 70a-77a). It was agreed that, during the interim period running from the date of the 1974 Agreement to the date the permanent sludge management facilities were opera-

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[2] Sludge is the solid material separated from the liquid effluent during the treatment process. Solids not captured as sludge in the treatment process are discharged in the effluent to the Potomac River.

tional or December 31, 1977, whichever was earlier, each of the user jurisdictions other than the District of Columbia would dispose of its own share of the sludge (*ibid.*). The other jurisdictions also agreed to dispose of the District of Columbia's share of sludge during the interim period (*ibid.*).

2. The user jurisdictions failed to devise a permanent plan within the time allowed by the 1974 Agreement. When it was recognized that the interim period would expire before a facility to manage sludge was constructed or a plan had even been agreed upon, the United States attempted to obtain a further interim agreement. Failing in this, on November 9, 1977, the United States filed a complaint in district court (Civil Action No. 77-1929) alleging that the defendants District of Columbia, Washington Suburban Sanitary Commission, Montgomery County, Maryland, Prince George's County, Maryland, and Fairfax County, Virginia, had violated the court's July 29, 1974, order by failing to devise a permanent sludge management plan by July 1, 1976. The complaint further alleged that the District of Columbia would be in violation of certain requirements imposed under the Clean Water Act if it were unable to dispose of the sludge produced at the plant and were forced to discharge it into the river.[3] The United States therefore sought a preliminary injunction requiring the suburban jurisdictions to continue assuming responsibility for disposal of the sludge

[3] The United States alleged that the effluent limitations contained in the National Pollutant Discharge Elimination System ("NPDES") permit issued to the District of Columbia under Section 402 of the Act, 33 U.S.C. 1342, would be violated.

after the planned interim period expired on December 31, 1977 (Pet. App. 6a).

In response to the 1977 lawsuit, the user jurisdictions again negotiated to devise a permanent sludge plan. On January 24, 1978, the district court entered another consent order which extended the date of the interim period under the 1974 Agreement until September 21, 1978, thereby providing for the continued disposal of the sludge by the user jurisdictions. That order also extended the time for submitting a permanent sludge plan until January 15, 1978 (Pet. App. 6a).

3. The user jurisdictions again failed to devise a permanent plan for sludge disposal and so violated the district court's order for a second time. By May 1978 it became apparent to the court that, in order to provide for disposal of the sludge generated at Blue Plains for the future, an order designating specific sites and methods for continued disposal would be required. Therefore, on May 18, 1978, the district court entered an order directing each of the user jurisdictions to report on possible sites within their boundaries for sludge disposal, and to designate a site for disposal of sludge after the termination of the interim period (Pet App. 6a, 52a-54a). Each of the user jurisdictions other than the District of Columbia filed such a report (*id.* at 6a-7a).

As the District of Columbia had not specified a site, the United States studied the alternatives available and recommended that the District be directed to build a composting facility at the Blue Plains plant. The District of Columbia challenged this recommendation. After conducting hearings and receiving numerous affidavits, the district court entered an order on July 10, 1978, requiring, *inter alia*,

the District of Columbia to construct a composting facility at the Blue Plains plant (Pet. App. 45a-51a). The District of Columbia subsequently appealed that portion of the order to the court of appeals which affirmed without opinion. *State Water Control Board* v. *WSSC*, 600 F.2d 281 (D.C. Cir. 1979).

The district court's July 1978 order also required each of the other user jurisdictions to dispose of its share of the sludge at the site each had designated. Paragraph 1.c. of the order (Pet. App. 47a-48a) required Montgomery County to construct a composting facility in a location known as Site 2. The order further required the WSSC to "take all actions necessary to manage sludge on the Maryland sites designated in this order, including but not limited to, acquisition of property rights, obtaining of all required permits, design, construction and operation" (*id.* at 50a). In contrast to the controversy surrounding the designation of the District of Columbia composting site, the Site 2 requirement engendered relatively little controversy. Indeed, petitioner submitted a letter reciting several complaints about Site 2 but did not seek modification of, or pursue an appeal from, the July 10, 1978, order.

4. The WSSC and Montgomery County failed to complete the Site 2 composting facility within the one year allowed by the 1978 order, but they did promptly commence measures to acquire the necessary land at Site 2. Moreover, in the budgets for fiscal years 1979 and 1980, the WSSC specifically included funds for constructing the compost facility. In early 1980 the WSSC informed the district court that it had discovered that there were restrictive covenants burdening the site which might have to

be acquired at a cost of several million dollars. Nevertheless, neither WSSC nor any of the other parties to this case requested modification of the July 10, 1978, order to remove the Site 2 composting requirement. However, in March 1980, without giving any public explanation, the WSSC deleted funds for the construction of the Site 2 facility from its budget for fiscal year 1981 (Pet. App. 8a).[4] In response, on April 4, 1980, Montgomery County moved to compel the WSSC to comply with the July 10, 1978 order. The WSSC did not oppose this motion but petitioner did (*id.* at 9a). After a hearing, the district court issued an order on April 25, 1980 (Pet. App. 43a-44a) recognizing that the requirement that the WSSC operate the Site 2 facility remained in effect and requiring the WSSC to restore funds for Site 2 to the WSSC budget.

After the issuance of the April 25, 1980, order the WSSC twice met and twice again deadlocked on restoration of funds for the Site 2 facility. Consequently, on May 14, 1980, Montgomery County filed an application to hold the commissioners appointed by Prince George's County in contempt of court, alleging that they had opposed efforts by the other Commissioners to reinsert the required funds for Site 2. In response, the named Commissioners argued that the restoration of funds for Site 2 was a ministerial act which did not require their support and could be performed by the General Manager of

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[4] As respondents WSSC and Montgomery County explain (Br. in Opp. 8 n.8) the deletion occurred when the six WSSC Commissioners deadlocked on a vote to include funds for Site 2 in the WSSC fiscal year 1981 budget. The three Commissioners appointed by Montgomery County voted to include the funds while the three Commissioners appointed by Prince George's County opposed funding.

the WSSC. The district court held that the restoration of funds for Site 2 was in fact a ministerial act (Pet. App. 9a). The court accordingly entered an order on June 4, 1980, (*id.* at 41a-42a) denying Montgomery County's motion but directing the General Manager of the WSSC to include Site 2 in the WSSC budget.

5. By this time, petitioner had commenced several actions against the WSSC in Maryland state courts which, if successful, would result in the frustration of the July 10, 1978, order by preventing the construction of the Site 2 compost facility (Pet. App. 9a-10a). In one such case petitioner obtained a preliminary injunction (*id.* at 37a-38a) on June 17, 1980, barring the WSSC from acquiring Site 2 through an offer to purchase the property and directing the WSSC to seek a continuation of a hearing scheduled to be held on June 30, 1980, in the condemnation actions brought by the WSSC.

The WSSC promptly informed the district court of the state court's order by letter dated June 19, 1980. In that letter, counsel for the WSSC asked the district court to hold a hearing on June 27, 1980, "at which any party or other interested person would be permitted to show cause why this Court should not take immediate, appropriate action to ensure that its order of April 25, 1980, will be fully and effectively implemented." On June 20, 1980, the district court issued the requested order (Pet. App. 34a-35a). Subsequently, both Montgomery County and the WSSC moved the district court to enjoin the operation of the state court order and to direct petitioner to dismiss its state court challenges affecting enforcement of the July 1978 order. The United States, the State of Maryland, and the Commonwealth of Virginia supported the movants at the June 27 hearing. The

district court's order: (1) enjoined the WSSC from complying with the state court order and required the WSSC to proceed expeditiously with all actions necessary to complete the Site 2 composting facility, (2) directed petitioner to seek dissolution of the state court order and to dismiss each of its state court challenges to Site 2, (3) enjoined all parties from commencing any litigation which would frustrate the orders of the district court, and (4) authorized any party or potential intervenor believing there to be good cause for modification of the district court's orders to seek relief in the district court (Pet. App. 27a-33a). In accompanying findings, the district court noted that "[t]he public interest clearly necessitates that all challenges and objections to that comprehensive [sludge disposal] program be heard and decided in this Court and, if necessary, in the United States Court of Appeals in order to avoid the delay, expense, and inconsistent adjudications incident to litigation of these issues in diverse state and federal forums" (*id.* at 31a).

6. Petitioner appealed from the district court's orders of June 4, 1980, and June 27, 1980.[5] In the court of appeals, as here, petitioner argued that these two orders, and the prior April 25, 1980, order, violate the Tenth Amendment and that the June 27 order violated the Anti-Injunction Act, 28 U.S.C. 2283 (Pet. App. 10a-11a, 15a). The court of appeals rejected the former contention, concluding that "the district court did not exceed its statutory or equitable authority and that no interest protected by the tenth amendment has been infringed" (*id.* at 15a). The

[5] Prince George's County's motion for a stay of the June 27 order was denied by the court of appeals. Prince George's County then asked this Court to stay the June 27 order and that request was denied (Pet. App. 25a-26a).

court of appeals further held that the district court's June 27 order was necessary to protect and effectuate the court's earlier orders and accordingly fell within an exception to the Anti-Injunction Act (*id.* at 15a-21a).

ARGUMENT

This case presents no issue warranting review by this Court. The judgment of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals.

1. Petitioner's contention that the district court's challenged orders conflict with the Tenth Amendment, as construed in *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), is unfounded. Indeed, *National League of Cities* is wholly inapposite in this case, because the orders resisted by petitioner do not rest directly upon the enforcement of federal legislation enacted under the Commerce Clause (or under any other constitutional authority) binding upon state or local government entities. Rather, the challenged orders represent enforcement of the 1974 consent decree, a power which petitioner freely agreed should be vested in the district court in 1974. And the consent degree itself resolved an essentially contractual dispute among the users of the Blue Plains plant as to the terms of use. To be sure, an underlying consideration which, *inter alia*, prompted the intervention of the United States in this litigation, was the effect that the parties' dispute concerning operation of the Blue Plains plant had upon the discharge of pollutants by that plant into the Potomac. And that discharge is, in turn, subject to the Clean Water Act, 33 U.S.C. 1251. Yet, the federal anti-pollution statute, which may have provided some impetus for the parties to resolve their dispute, is not

the predicate of the authority exercised by the district court in enforcing the consent decree. Indeed, neither Congress, nor any federal executive authority has sought to fasten the particular requirements now resisted by petitioner upon it as a matter of federal law. Rather, the other interested parties have merely secured the assistance of the district court in enforcing petitioner's agreement. There is simply no challenge here to the requirements imposed by the federal statute upon the Blue Plains plant.[6]

The challenged orders were clearly within the district court's power to fashion and effectuate relief in enforcing its previous orders. See *Swann* v. *Board of Education*, 402 U.S. 1, 15-16 (1971). Indeed, as the court of appeals noted (Pet. App. 14a-15a), the July 10, 1978, order and its *sequelae* became necessary only because the parties to this action, including petitioner, failed to comply with their obligations to formulate a sludge disposal plan under the 1974 consent decree. Under these circumstances, it is readily apparent that the district court's orders were well within the district court's power to enforce the 1974 consent decree and do not conflict with the prin-

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[6] In any event, as Justice Blackmun's pivotal concurring opinion in *National League of Cities* affirms (426 U.S. at 856):

> The court's opinion * * * adopts a balancing approach, and does not outlaw federal power in areas such as environmental protection, where the federal interest is demonstrably greater and where state facility compliance with imposed federal standards would be essential.

Petitioner apparently concedes the constitutionality of enforcement of the Clean Water Act against the Blue Plains plant (see Pet. 10).

ciples of federalism embodied in the Tenth Amendment. See *Washington* v. *Fishing Vessel Association*, 443 U.S. 658, 695-696 (1979); cf. *Milliken* v. *Bradley*, 433 U.S. 267, 280-287 (1977).

2. Petitioner also contends (Pet. 13-20) that the district court's June 27 order violates the Anti-Injunction Act, 28 U.S.C. 2283. In essence, petitioner argues that the district court's June 27, 1980, order was not necessary to "protect and effectuate" the July 10, 1978, order. This argument is based on the mistaken premises that the July 10, 1978, order was "result-oriented, not site-oriented" and that "its focus was not on where disposal sites would be located" (Pet. 16). But, as is explained above (pages 4-6), the parties' inability to devise a permanent sludge disposal plan and the need to insure that sludge be disposed in the absence of such a plan, led the district court to specify the disposal sites to be operated.[7] The effect of the state court's June 17, 1980, temporary injunction was accordingly to frustrate directly the district court's July 10, 1978, order requiring the construction of a compost facility at Site 2. Similarly, the relief which petitioner sought in the other cases it filed—an injunction against development of Site 2—would, if granted, frustrate the enforcement of the July 10, 1978, order. As such, the district court's June 27 order enjoining the WSSC from complying with the state court's June 17 in-

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[7] The parties to this case have consistently recognized that the July 10, 1978, order required specific disposal sites, including Site 2. In fact, the basis of the District of Columbia's appeal of the July 10, 1978, order was its recognition that the July 10 order required it to compost sludge at a particular site—the Blue Plains plant itself. See pages 5-6, *supra*.

junction and directing petitioner to abandon its state court suits was authorized under the Anti-Injunction Act, which allows a federal court to enter such an injunction where "necessary * * * to protect or effectuate its judgments" (Pet. App. 31a). See, *e.g.*, *Doe* v. *Ceci*, 517 F.2d 1203 (7th Cir. 1975); *Swann* v. *Board of Education*, 501 F.2d 383, 384 (4th Cir. 1974).[8] Thus, the court of appeals correctly rejected petitioner's contention that the district court proceeded contrary to the Anti-Injunction Act.[9]

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[8] The court of appeals noted that the separate "in aid of" exception to the Anti-Injunction Act also justified the issuance of the district court's June 27 order (Pet. App. 16a-17a n.16). Petitioner's claim that the court of appeals misconstrued that exception is unfounded. The court of appeals merely noted this Court's recognition in *Atlantic Coast Line R.R.* v. *Brotherhood of Locomotive Engineers*, 398 U.S. 281, 295 (1970), that there is some overlap between the "protect or effectuate" and "in aid of" exceptions to the Anti-Injunction Act, and suggested both were applicable here. In the circumstances present: the protracted nature of the federal court litigation, the complexity of the issues, the number of parties involved, the district court's familiarity with this case and the inescapable conflict between the federal and state proceedings, the June 27 order may properly be deemed necessary in aid of federal court jurisdiction.

[9] Although the court of appeals declined to reach the issue (Pet. App. 16a n.15), the June 27 order was appropriate irrespective of whether it fell within the exceptions to the Anti-Injunction Act, because that Act does not apply where the United States is one of the litigants seeking to enjoin state proceedings. *National Labor Relations Board* v. *Nash-Finch Co.*, 404 U.S. 138, 146 (1971); *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220, 226 (1957).

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 1981

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